

110TH CONGRESS
2D SESSION

H. R. 6521

To reform the regulation of certain housing-related Government-sponsored enterprises.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2008

Mr. GARRETT of New Jersey (for himself, Mr. MCHENRY, Mr. McCOTTER, Mr. PRICE of Georgia, Mr. ROYCE, Mr. HENSARLING, Mr. BACHUS, Mr. FEENEY, Mr. BARRETT of South Carolina, Mrs. BACHMANN, Mr. LUCAS, and Mr. JONES of North Carolina) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform the regulation of certain housing-related Government-sponsored enterprises.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Housing Finance Regulatory Reform Act of
6 2008”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title and table of contents.
 Sec. 2. Definitions.

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 101. Establishment of the Federal Housing Finance Agency.
 Sec. 102. Duties and authorities of the Director.
 Sec. 103. Federal Housing Finance Oversight Board.
 Sec. 104. Authority to require reports by regulated entities.
 Sec. 105. Examiners and accountants; authority to contract for reviews of regulated entities; ombudsman.
 Sec. 106. Assessments.
 Sec. 107. Regulations and orders.
 Sec. 108. Prudential management and operations standards.
 Sec. 109. Review of and authority over enterprise assets and liabilities.
 Sec. 110. Risk-based capital requirements.
 Sec. 111. Minimum capital levels.
 Sec. 112. Registration under the securities laws.
 Sec. 113. Prohibition and withholding of executive compensation.
 Sec. 114. Limit on golden parachutes.
 Sec. 115. Reporting of fraudulent loans.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
 Sec. 122. Assumption by the Director of certain other HUD responsibilities.
 Sec. 123. Review of enterprise products.
 Sec. 124. Conforming loan limits.
 Sec. 125. Annual housing report.
 Sec. 126. Public use database.
 Sec. 127. Reporting of mortgage data.
 Sec. 128. Revision of housing goals.
 Sec. 129. Duty to serve underserved markets.
 Sec. 130. Monitoring and enforcing compliance with housing goals.
 Sec. 131. Transfer and rights of certain HUD employees.

Subtitle C—Prompt Corrective Action

- Sec. 141. Critical capital levels.
 Sec. 142. Capital classifications.
 Sec. 143. Supervisory actions applicable to undercapitalized regulated entities.
 Sec. 144. Supervisory actions applicable to significantly undercapitalized regulated entities.
 Sec. 145. Authority over critically undercapitalized regulated entities.

Subtitle D—Enforcement Actions

- Sec. 151. Cease and desist proceedings.
 Sec. 152. Temporary cease and desist proceedings.
 Sec. 153. Removal and prohibition authority.
 Sec. 154. Enforcement and jurisdiction.

- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.
- Sec. 157. Notice after separation from service.
- Sec. 158. Subpoena authority.

Subtitle E—General Provisions

- Sec. 161. Conforming and technical amendments.
- Sec. 162. Presidentially-appointed directors of enterprises.
- Sec. 163. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Recognition of distinctions between the enterprises and the Federal Home Loan Banks.
- Sec. 202. Directors.
- Sec. 203. Definitions.
- Sec. 204. Agency oversight of Federal Home Loan Banks.
- Sec. 205. Housing goals.
- Sec. 206. Community development financial institutions.
- Sec. 207. Sharing of information among Federal Home Loan Banks.
- Sec. 208. Exclusion from certain requirements.
- Sec. 209. Voluntary mergers.
- Sec. 210. Authority to reduce districts.
- Sec. 211. Community financial institution members.
- Sec. 212. Public use data base; reports to Congress.
- Sec. 213. Semiannual reports.
- Sec. 214. Liquidation or reorganization of a Federal Home Loan Bank.
- Sec. 215. Study and report to Congress on securitization of acquired member assets.
- Sec. 216. Technical and conforming amendments.
- Sec. 217. Study on Federal Home Loan Bank advances.
- Sec. 218. Federal Home Loan Bank refinancing authority for certain residential mortgage loans.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Subtitle A—OFHEO

- Sec. 301. Abolishment of OFHEO.
- Sec. 302. Continuation and coordination of certain actions.
- Sec. 303. Transfer and rights of employees of OFHEO.
- Sec. 304. Transfer of property and facilities.

Subtitle B—Federal Housing Finance Board

- Sec. 311. Abolishment of the Federal Housing Finance Board.
- Sec. 312. Continuation and coordination of certain actions.
- Sec. 313. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 314. Transfer of property and facilities.

1 **SEC. 2. DEFINITIONS.**

2 (a) FEDERAL SAFETY AND SOUNDNESS ACT DEFINI-
3 TIONS.—Section 1303 of the Federal Housing Enterprises
4 Financial Safety and Soundness Act of 1992 (12 U.S.C.
5 4502) is amended—

6 (1) in each of paragraphs (8), (9), (10), and
7 (19), by striking “Secretary” each place that term
8 appears and inserting “Director”;

9 (2) by redesignating paragraphs (16) through
10 (19) as paragraphs (21) through (24), respectively;

11 (3) by striking paragraphs (13) through (15)
12 and inserting the following:

13 “(19) OFFICE OF FINANCE.—The term ‘Office
14 of Finance’ means the Office of Finance of the Fed-
15 eral Home Loan Bank System (or any successor
16 thereto).

17 “(20) REGULATED ENTITY.—The term ‘regu-
18 lated entity’ means—

19 “(A) the Federal National Mortgage Asso-
20 ciation and any affiliate thereof;

21 “(B) the Federal Home Loan Mortgage
22 Corporation and any affiliate thereof; and

23 “(C) any Federal Home Loan Bank.”;

24 (4) by redesignating paragraphs (11) and (12)
25 as paragraphs (17) and (18), respectively;

1 (5) by redesignating paragraph (7) as para-
2 graph (12);

3 (6) by redesignating paragraphs (8) through
4 (10) as paragraphs (14) through (16), respectively;
5 (7) in paragraph (5)—

6 (A) by striking “(5)” and inserting “(9)”;
7 and

8 (B) by striking “Office of Federal Housing
9 Enterprise Oversight of the Department of
10 Housing and Urban Development” and insert-
11 ing “Federal Housing Finance Agency”;

12 (8) by redesignating paragraph (6) as para-
13 graph (10);

14 (9) by redesignating paragraphs (2) through
15 (4) as paragraphs (5) through (7), respectively;

16 (10) by inserting after paragraph (7), as redes-
17 ignated, the following:

18 “(8) DEFAULT; IN DANGER OF DEFAULT.—

19 “(A) DEFAULT.—The term ‘default’
20 means, with respect to a regulated entity, any
21 adjudication or other official determination by
22 any court of competent jurisdiction, or the
23 Agency, pursuant to which a conservator, re-
24 ceiver, limited-life regulated entity, or legal cus-
25 todian is appointed for a regulated entity.

1 “(B) IN DANGER OF DEFAULT.—The term
 2 ‘in danger of default’ means a regulated entity
 3 with respect to which, in the opinion of the
 4 Agency—

5 “(i) the regulated entity is not likely
 6 to be able to pay the obligations of the reg-
 7 ulated entity in the normal course of busi-
 8 ness; or

9 “(ii) the regulated entity—

10 “(I) has incurred or is likely to
 11 incur losses that will deplete all or
 12 substantially all of its capital; and

13 “(II) there is no reasonable pros-
 14 pect that the capital of the regulated
 15 entity will be replenished.”;

16 (11) by inserting after paragraph (1) the fol-
 17 lowing:

18 “(2) AGENCY.—The term ‘Agency’ means the
 19 Federal Housing Finance Agency established under
 20 section 1311.

21 “(3) AUTHORIZING STATUTES.—The term ‘au-
 22 thorizing statutes’ means—

23 “(A) the Federal National Mortgage Asso-
 24 ciation Charter Act;

1 “(B) the Federal Home Loan Mortgage
2 Corporation Act; and

3 “(C) the Federal Home Loan Bank Act.

4 “(4) BOARD.—The term ‘Board’ means the
5 Federal Housing Finance Oversight Board estab-
6 lished under section 1313A.”;

7 (12) by inserting after paragraph (10), as re-
8 designated by this section, the following:

9 “(11) ENTITY-AFFILIATED PARTY.—The term
10 ‘entity-affiliated party’ means—

11 “(A) any director, officer, employee, or
12 controlling stockholder of, or agent for, a regu-
13 lated entity;

14 “(B) any shareholder, affiliate, consultant,
15 or joint venture partner of a regulated entity,
16 and any other person, as determined by the Di-
17 rector (by regulation or on a case-by-case basis)
18 that participates in the conduct of the affairs of
19 a regulated entity, provided that a member of
20 a Federal Home Loan Bank shall not be
21 deemed to have participated in the affairs of
22 that Bank solely by virtue of being a share-
23 holder of, and obtaining advances from, that
24 Bank;

“(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

“(i) the independent contractor knowingly or recklessly participates in—

“(I) any violation of any law or regulation;

“(II) any breach of fiduciary duty; or

“(III) any unsafe or unsound practice; and

“(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

“(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

“(E) the Office of Finance.”;

(13) by inserting after paragraph (12), as redesignated by this section, the following:

“(13) LIMITED-LIFE REGULATED ENTITY.—

The term ‘limited-life regulated entity’ means an entity established by the Agency under section 1367(i) with respect to a Federal Home Loan Bank in de-

1 fault or in danger of default or with respect to an
2 enterprise in default or in danger of default.”; and

3 (14) by adding at the end the following:

4 “(25) VIOLATION.—The term ‘violation’ in-
5 cludes any action (alone or in combination with an-
6 other or others) for or toward causing, bringing
7 about, participating in, counseling, or aiding or abet-
8 ting a violation.”.

9 (b) REFERENCES IN THIS ACT.—As used in this Act,
10 unless otherwise specified—

11 (1) the term “Agency” means the Federal
12 Housing Finance Agency;

13 (2) the term “Director” means the Director of
14 the Agency; and

15 (3) the terms “enterprise”, “regulated entity”,
16 and “authorizing statutes” have the same meanings
17 as in section 1303 of the Federal Housing Enter-
18 prises Financial Safety and Soundness Act of 1992,
19 as amended by this Act.

1 **TITLE I—REFORM OF**
2 **REGULATION OF ENTERPRISES**
3 **Subtitle A—Improvement of Safety**
4 **and Soundness Supervision**

5 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**
6 **NANCE AGENCY.**

7 The Federal Housing Enterprises Financial Safety
8 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
9 amended by striking sections 1311 and 1312 and inserting
10 the following:

11 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**
12 **FINANCE AGENCY.**

13 “(a) ESTABLISHMENT.—There is established the
14 Federal Housing Finance Agency, which shall be an inde-
15 pendent agency of the Federal Government.

16 “(b) GENERAL SUPERVISORY AND REGULATORY AU-
17 THORITY.—

18 “(1) IN GENERAL.—Each regulated entity shall,
19 to the extent provided in this title, be subject to the
20 supervision and regulation of the Agency.

21 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE
22 MAC, THE FEDERAL HOME LOAN BANKS, AND THE
23 OFFICE OF FINANCE.—The Director shall have gen-
24 eral regulatory authority over each regulated entity
25 and the Office of Finance, and shall exercise such

1 general regulatory authority, including such duties
2 and authorities set forth under section 1313, to en-
3 sure that the purposes of this Act, the authorizing
4 statutes, and any other applicable law are carried
5 out.

6 “(c) SAVINGS PROVISION.—The authority of the Di-
7 rector to take actions under subtitles B and C shall not
8 in any way limit the general supervisory and regulatory
9 authority granted to the Director under subsection (b).

10 **“SEC. 1312. DIRECTOR.**

11 “(a) ESTABLISHMENT OF POSITION.—There is estab-
12 lished the position of the Director of the Agency, who shall
13 be the head of the Agency.

14 “(b) APPOINTMENT; TERM.—

15 “(1) APPOINTMENT.—The Director shall be ap-
16 pointed by the President, by and with the advice and
17 consent of the Senate, from among individuals who
18 are citizens of the United States, have a dem-
19 onstrated understanding of financial management or
20 oversight, and have a demonstrated understanding
21 of capital markets, including the mortgage securities
22 markets and housing finance.

23 “(2) TERM.—The Director shall be appointed
24 for a term of 5 years, unless removed before the end
25 of such term for cause by the President.

1 “(3) VACANCY.—A vacancy in the position of
2 Director that occurs before the expiration of the
3 term for which a Director was appointed shall be
4 filled in the manner established under paragraph
5 (1), and the Director appointed to fill such vacancy
6 shall be appointed only for the remainder of such
7 term.

8 “(4) SERVICE AFTER END OF TERM.—An indi-
9 vidual may serve as the Director after the expiration
10 of the term for which appointed until a successor
11 has been appointed.

12 “(5) TRANSITIONAL PROVISION.—Notwith-
13 standing paragraphs (1) and (2), during the period
14 beginning on the effective date of the Federal Hous-
15 ing Finance Regulatory Reform Act of 2008, and
16 ending on the date on which the Director is ap-
17 pointed and confirmed, the person serving as the Di-
18 rector of the Office of Federal Housing Enterprise
19 Oversight of the Department of Housing and Urban
20 Development on that effective date shall act for all
21 purposes as, and with the full powers of, the Direc-
22 tor.

23 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-
24 TERPRISE REGULATION.—

1 “(1) IN GENERAL.—The Agency shall have a
2 Deputy Director of the Division of Enterprise Regu-
3 lation, who shall be designated by the Director from
4 among individuals who are citizens of the United
5 States, have a demonstrated understanding of finan-
6 cial management or oversight, and have a dem-
7 onstrated understanding of mortgage securities mar-
8 kets and housing finance.

9 “(2) FUNCTIONS.—The Deputy Director of the
10 Division of Enterprise Regulation shall have such
11 functions, powers, and duties with respect to the
12 oversight of the enterprises as the Director shall pre-
13 scribe.

14 “(d) DEPUTY DIRECTOR OF THE DIVISION OF FED-
15 ERAL HOME LOAN BANK REGULATION.—

16 “(1) IN GENERAL.—The Agency shall have a
17 Deputy Director of the Division of Federal Home
18 Loan Bank Regulation, who shall be designated by
19 the Director from among individuals who are citi-
20 zens of the United States, have a demonstrated un-
21 derstanding of financial management or oversight,
22 and have a demonstrated understanding of the Fed-
23 eral Home Loan Bank System and housing finance.

24 “(2) FUNCTIONS.—The Deputy Director of the
25 Division of Federal Home Loan Bank Regulation

1 shall have such functions, powers, and duties with
2 respect to the oversight of the Federal Home Loan
3 Banks as the Director shall prescribe.

4 “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND
5 GOALS.—

6 “(1) IN GENERAL.—The Agency shall have a
7 Deputy Director for Housing Mission and Goals,
8 who shall be designated by the Director from among
9 individuals who are citizens of the United States,
10 and have a demonstrated understanding of the hous-
11 ing markets and housing finance.

12 “(2) FUNCTIONS.—The Deputy Director for
13 Housing Mission and Goals shall have such func-
14 tions, powers, and duties with respect to the over-
15 sight of the housing mission and goals of the enter-
16 prises, and with respect to oversight of the housing
17 finance and community and economic development
18 mission of the Federal Home Loan Banks, as the
19 Director shall prescribe.

20 “(3) CONSIDERATIONS.—In exercising such
21 functions, powers, and duties, the Deputy Director
22 for Housing Mission and Goals shall consider the
23 differences between the enterprises and the Federal
24 Home Loan Banks, including those described in sec-
25 tion 1313(f).

1 “(f) ACTING DIRECTOR.—In the event of the death,
2 resignation, sickness, or absence of the Director, the
3 President shall designate either the Deputy Director of the
4 Division of Enterprise Regulation, the Deputy Director of
5 the Division of Federal Home Loan Bank Regulation, or
6 the Deputy Director for Housing Mission and Goals, to
7 serve as acting Director until the return of the Director,
8 or the appointment of a successor pursuant to subsection
9 (b).

10 “(g) LIMITATIONS.—The Director and each of the
11 Deputy Directors may not—

12 “(1) have any direct or indirect financial inter-
13 est in any regulated entity or entity-affiliated party;

14 “(2) hold any office, position, or employment in
15 any regulated entity or entity-affiliated party; or

16 “(3) have served as an executive officer or di-
17 rector of any regulated entity or entity-affiliated
18 party at any time during the 3-year period preceding
19 the date of appointment or designation of such indi-
20 vidual as Director or Deputy Director, as applica-
21 ble.”.

22 **SEC. 102. DUTIES AND AUTHORITIES OF THE DIRECTOR.**

23 (a) IN GENERAL.—Section 1313 of the Federal
24 Housing Enterprises Financial Safety and Soundness Act
25 of 1992 (12 U.S.C. 4513) is amended to read as follows:

1 **“SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.**

2 “(a) DUTIES.—

3 “(1) PRINCIPAL DUTIES.—The principal duties
4 of the Director shall be—

5 “(A) to oversee the prudential operations
6 of each regulated entity; and

7 “(B) to ensure that—

8 “(i) each regulated entity operates in
9 a safe and sound manner, including main-
10 tenance of adequate capital and internal
11 controls;

12 “(ii) the operations and activities of
13 each regulated entity foster liquid, effi-
14 cient, competitive, and resilient national
15 housing finance markets (including activi-
16 ties relating to mortgages on housing for
17 low- and moderate-income families involv-
18 ing a reasonable economic return that may
19 be less than the return earned on other ac-
20 tivities);

21 “(iii) each regulated entity complies
22 with this title and the rules, regulations,
23 guidelines, and orders issued under this
24 title and the authorizing statutes;

25 “(iv) each regulated entity carries out
26 its statutory mission only through activi-

1 ties that are authorized under and con-
2 sistent with this title and the authorizing
3 statutes; and

4 “(v) the activities of each regulated
5 entity and the manner in which such regu-
6 lated entity is operated are consistent with
7 the public interest.

8 “(2) SCOPE OF AUTHORITY.—The authority of
9 the Director shall include the authority—

10 “(A) to review and, if warranted based on
11 the principal duties described in paragraph (1),
12 reject any acquisition or transfer of a control-
13 ling interest in a regulated entity; and

14 “(B) to exercise such incidental powers as
15 may be necessary or appropriate to fulfill the
16 duties and responsibilities of the Director in the
17 supervision and regulation of each regulated en-
18 tity.

19 “(b) DELEGATION OF AUTHORITY.—The Director
20 may delegate to officers and employees of the Agency any
21 of the functions, powers, or duties of the Director, as the
22 Director considers appropriate.

23 “(c) LITIGATION AUTHORITY.—

24 “(1) IN GENERAL.—In enforcing any provision
25 of this title, any regulation or order prescribed under

1 this title, or any other provision of law, rule, regula-
2 tion, or order, or in any other action, suit, or pro-
3 ceeding to which the Director is a party or in which
4 the Director is interested, and in the administration
5 of conservatorships and receiverships, the Director
6 may act in the Director's own name and through the
7 Director's own attorneys.

8 “(2) SUBJECT TO SUIT.—Except as otherwise
9 provided by law, the Director shall be subject to suit
10 (other than suits on claims for money damages) by
11 a regulated entity with respect to any matter under
12 this title or any other applicable provision of law,
13 rule, order, or regulation under this title, in the
14 United States district court for the judicial district
15 in which the regulated entity has its principal place
16 of business, or in the United States District Court
17 for the District of Columbia, and the Director may
18 be served with process in the manner prescribed by
19 the Federal Rules of Civil Procedure.”.

20 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
21 AND RECOMMENDATIONS.—Section 111 of Public Law
22 93–495 (12 U.S.C. 250) is amended by striking “the Fed-
23 eral Housing Finance Board” and inserting “the Director
24 of the Federal Housing Finance Agency”.

1 **SEC. 103. FEDERAL HOUSING FINANCE OVERSIGHT BOARD.**

2 (a) IN GENERAL.—The Federal Housing Enterprises
3 Financial Safety and Soundness Act of 1992 (12 U.S.C.
4 4501 et seq.) is amended by inserting after section 1313
5 the following:

6 **“SEC. 1313A. FEDERAL HOUSING FINANCE OVERSIGHT**
7 **BOARD.**

8 “(a) IN GENERAL.—There is established the Federal
9 Housing Finance Oversight Board, which shall advise the
10 Director with respect to overall strategies and policies in
11 carrying out the duties of the Director under this title.

12 “(b) LIMITATIONS.—The Board may not exercise any
13 executive authority, and the Director may not delegate to
14 the Board any of the functions, powers, or duties of the
15 Director.

16 “(c) COMPOSITION.—The Board shall be comprised
17 of 4 members, of whom—

18 “(1) 1 member shall be the Secretary of the
19 Treasury;

20 “(2) 1 member shall be the Secretary of Hous-
21 ing and Urban Development;

22 “(3) 1 member shall be the Chairman of the
23 Securities and Exchange Commission; and

24 “(4) 1 member shall be the Director, who shall
25 serve as the Chairperson of the Board.

26 “(d) MEETINGS.—

1 “(1) IN GENERAL.—The Board shall meet upon
2 notice by the Director, but in no event shall the
3 Board meet less frequently than once every 3
4 months.

5 “(2) SPECIAL MEETINGS.—Either the Secretary
6 of the Treasury, the Secretary of Housing and
7 Urban Development, or the Chairman of the Securi-
8 ties and Exchange Commission may, upon giving
9 written notice to the Director, require a special
10 meeting of the Board.

11 “(e) TESTIMONY.—On an annual basis, the Board
12 shall testify before Congress regarding—

13 “(1) the safety and soundness of the regulated
14 entities;

15 “(2) any material deficiencies in the conduct of
16 the operations of the regulated entities;

17 “(3) the overall operational status of the regu-
18 lated entities;

19 “(4) an evaluation of the performance of the
20 regulated entities in carrying out their respective
21 missions;

22 “(5) operations, resources, and performance of
23 the Agency; and

1 “(6) such other matters relating to the Agency
2 and its fulfillment of its mission, as the Board deter-
3 mines appropriate.”.

4 (b) ANNUAL REPORT OF THE DIRECTOR.—Section
5 1319B(a) of the Federal Housing Enterprises Financial
6 Safety and Soundness Act of 1992 (12 U.S.C. 4521(a))
7 is amended—

8 (1) by striking “enterprise” each place that
9 term appears and inserting “regulated entity”;

10 (2) by striking “enterprises” each place that
11 term appears and inserting “regulated entities”;

12 (3) in paragraph (3), by striking “; and” and
13 inserting a semicolon;

14 (4) in paragraph (4), by striking “1994.” and
15 inserting “1994; and”; and

16 (5) by adding at the end the following:

17 “(5) the assessment of the Board or any of its
18 members with respect to—

19 “(A) the safety and soundness of the regu-
20 lated entities;

21 “(B) any material deficiencies in the con-
22 duct of the operations of the regulated entities;

23 “(C) the overall operational status of the
24 regulated entities; and

1 “(D) an evaluation of the performance of
 2 the regulated entities in carrying out their re-
 3 spective missions;

4 “(6) operations, resources, and performance of
 5 the Agency; and

6 “(7) such other matters relating to the Agency
 7 and the fulfillment of its mission.”.

8 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
 9 **LATED ENTITIES.**

10 (a) IN GENERAL.—Section 1314 of the Federal
 11 Housing Enterprises Financial Safety and Soundness Act
 12 of 1992 (12 U.S.C. 4514) is amended—

13 (1) in the section heading, by striking “**ENTER-**
 14 **PRISES**” and inserting “**REGULATED ENTITIES**”;

15 (2) by striking “an enterprise” each place that
 16 term appears and inserting “a regulated entity”;

17 (3) by striking “the enterprise” and inserting
 18 “the regulated entity”;

19 (4) in subsection (a)—

20 (A) by striking the subsection heading and
 21 all that follows through “and operations” in
 22 paragraph (1) and inserting the following:

23 “(a) REGULAR AND SPECIAL REPORTS.—

24 “(1) REGULAR REPORTS.—The Director may
 25 require, by general or specific orders, a regulated en-

1 tity to submit regular reports, including financial
 2 statements determined on a fair value basis, on the
 3 condition (including financial condition), manage-
 4 ment, activities, or operations of the regulated enti-
 5 ty, as the Director considers appropriate”; and

6 (B) in paragraph (2)—

7 (i) by inserting “, by general or spe-
 8 cific orders,” after “may also require”; and

9 (ii) by striking “whenever” and insert-
 10 ing “on any of the topics specified in para-
 11 graph (1) or any other relevant topics, if”;

12 and

13 (5) by adding at the end the following:

14 “(c) PENALTIES FOR FAILURE TO MAKE RE-
 15 PORTS.—

16 “(1) VIOLATIONS.—It shall be a violation of
 17 this section for any regulated entity—

18 “(A) to fail to make, transmit, or publish
 19 any report or obtain any information required
 20 by the Director under this section, section
 21 309(k) of the Federal National Mortgage Asso-
 22 ciation Charter Act, section 307(c) of the Fed-
 23 eral Home Loan Mortgage Corporation Act, or
 24 section 20 of the Federal Home Loan Bank

1 Act, within the period of time specified in such
2 provision of law or otherwise by the Director; or

3 “(B) to submit or publish any false or mis-
4 leading report or information under this sec-
5 tion.

6 “(2) PENALTIES.—

7 “(A) FIRST TIER.—

8 “(i) IN GENERAL.—A violation de-
9 scribed in paragraph (1) shall be subject to
10 a penalty of not more than \$2,000 for each
11 day during which such violation continues,
12 in any case in which—

13 “(I) the subject regulated entity
14 maintains procedures reasonably
15 adapted to avoid any inadvertent error
16 and the violation was unintentional
17 and a result of such an error; or

18 “(II) the violation was an inad-
19 vertent transmittal or publication of
20 any report which was minimally late.

21 “(ii) BURDEN OF PROOF.—For pur-
22 poses of this subparagraph, the regulated
23 entity shall have the burden of proving
24 that the error was inadvertent or that a re-

1 port was inadvertently transmitted or pub-
2 lished late.

3 “(B) SECOND TIER.—A violation described
4 in paragraph (1) shall be subject to a penalty
5 of not more than \$20,000 for each day during
6 which such violation continues or such false or
7 misleading information is not corrected, in any
8 case that is not addressed in subparagraph (A)
9 or (C).

10 “(C) THIRD TIER.—A violation described
11 in paragraph (1) shall be subject to a penalty
12 of not more than \$1,000,000 per day for each
13 day during which such violation continues or
14 such false or misleading information is not cor-
15 rected, in any case in which the subject regu-
16 lated entity committed such violation knowingly
17 or with reckless disregard for the accuracy of
18 any such information or report.

19 “(3) ASSESSMENTS.—Any penalty imposed
20 under this subsection shall be in lieu of a penalty
21 under section 1376, but shall be assessed and col-
22 lected by the Director in the manner provided in sec-
23 tion 1376 for penalties imposed under that section,
24 and any such assessment (including the determina-

tion of the amount of the penalty) shall be otherwise
subject to the provisions of section 1376.

“(4) HEARING.—A regulated entity against
which a penalty is assessed under this section shall
be afforded an agency hearing if the regulated entity
submits a request for a hearing not later than 20
days after the date of the issuance of the notice of
assessment. Section 1374 shall apply to any such
proceedings.”.

(b) CONFORMING AMENDMENT.—The Federal Hous-
ing Enterprises Financial Safety and Soundness Act of
1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-
tions 1327 and 1328.

**SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO
CONTRACT FOR REVIEWS OF REGULATED EN-
TITIES; OMBUDSMAN.**

(a) IN GENERAL.—Section 1317 of the Federal
Housing Enterprises Financial Safety and Soundness Act
of 1992 (12 U.S.C. 4517) is amended—

(1) in subsection (a), by striking “enterprise”
each place that term appears and inserting “regu-
lated entity”;

(2) in subsection (b)—

(A) by inserting “of a regulated entity”
after “under this section”; and

1 (B) by striking “to determine the condition
2 of an enterprise for the purpose of ensuring its
3 financial safety and soundness” and inserting
4 “or appropriate”;

5 (3) in subsection (c), in the second sentence, by
6 inserting before the period “to conduct examinations
7 under this section”;

8 (4) by redesignating subsections (d) through (f)
9 as subsections (e) through (g), respectively; and

10 (5) by inserting after subsection (c) the fol-
11 lowing:

12 “(d) INSPECTOR GENERAL.—There shall be within
13 the Agency an Inspector General, who shall be appointed
14 in accordance with section 3(a) of the Inspector General
15 Act of 1978.”.

16 (b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-
17 ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of
18 the Federal Housing Enterprises Financial Safety and
19 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
20 adding at the end the following:

21 “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
22 AND EXAMINERS.—

23 “(1) APPLICABILITY.—This section shall apply
24 with respect to any position of examiner, accountant,
25 economist, and specialist in financial markets and in

1 technology at the Agency, with respect to supervision
2 and regulation of the regulated entities, that is in
3 the competitive service.

4 “(2) APPOINTMENT AUTHORITY.—The Director
5 may appoint candidates to any position described in
6 paragraph (1)—

7 “(A) in accordance with the statutes, rules,
8 and regulations governing appointments in the
9 excepted service; and

10 “(B) notwithstanding any statutes, rules,
11 and regulations governing appointments in the
12 competitive service.”.

13 (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—
14 Section 11 of the Inspector General Act of 1978 (5 U.S.C.
15 App.) is amended—

16 (1) in paragraph (1), by inserting “; the Direc-
17 tor of the Federal Housing Finance Agency” after
18 “Social Security Administration”; and

19 (2) in paragraph (2), by inserting “, the Fed-
20 eral Housing Finance Agency” after “Social Secu-
21 rity Administration”.

22 (d) AUTHORITY TO CONTRACT FOR REVIEWS OF
23 REGULATED ENTITIES.—Section 1319 of the Federal
24 Housing Enterprises Financial Safety and Soundness Act
25 of 1992 (12 U.S.C. 4519) is amended—

1 (1) in the section heading, by striking “**ENTER-**
2 **PRISES BY RATING ORGANIZATION**” and insert-
3 ing “**REGULATED ENTITIES**”; and

4 (2) by striking “enterprises” and inserting
5 “regulated entities”.

6 (e) OFFICE OF THE OMBUDSMAN.—Section 1317 of
7 the Federal Housing Enterprises Financial Safety and
8 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
9 adding at the end the following:

10 “(i) OMBUDSMAN.—The Director shall establish, by
11 regulation, an Office of the Ombudsman within the Agen-
12 cy, which shall be responsible for considering complaints
13 and appeals, from any regulated entity and any person
14 that has a business relationship with a regulated entity,
15 regarding any matter relating to the regulation and super-
16 vision of such regulated entity by the Agency. The regula-
17 tion issued by the Director under this subsection shall
18 specify the authority and duties of the Office of the Om-
19 budsman.”.

20 **SEC. 106. ASSESSMENTS.**

21 Section 1316 of the Federal Housing Enterprises Fi-
22 nancial Safety and Soundness Act of 1992 (12 U.S.C.
23 4516) is amended—

24 (1) by striking subsection (a) and inserting the
25 following:

1 “(a) ANNUAL ASSESSMENTS.—The Director shall es-
2 tablish and collect from the regulated entities annual as-
3 sessments in an amount not exceeding the amount suffi-
4 cient to provide for reasonable costs (including administra-
5 tive costs) and expenses of the Agency, including—

6 “(1) the expenses of any examinations under
7 section 1317 of this Act and under section 20 of the
8 Federal Home Loan Bank Act;

9 “(2) the expenses of obtaining any reviews and
10 credit assessments under section 1319;

11 “(3) such amounts in excess of actual expenses
12 for any given year as deemed necessary by the Di-
13 rector to maintain a working capital fund in accord-
14 ance with subsection (e); and

15 “(4) the windup of the affairs of the Office of
16 Federal Housing Enterprise Oversight and the Fed-
17 eral Housing Finance Board under title III of the
18 Federal Housing Finance Regulatory Reform Act of
19 2008.”;

20 (2) in subsection (b)—

21 (A) by realigning the margins of para-
22 graph (2) two ems from the left, so as to align
23 the left margin of such paragraph with the left
24 margins of paragraph (1);

1 (B) by redesignating paragraphs (2) and
2 (3) as paragraphs (3) and (4), respectively; and
3 (C) by inserting after paragraph (1) the
4 following:

5 “(2) SEPARATE TREATMENT OF FEDERAL
6 HOME LOAN BANK AND ENTERPRISE ASSESS-
7 MENTS.—Assessments collected from the enterprises
8 shall not exceed the amounts sufficient to provide
9 for the costs and expenses described in subsection
10 (a) relating to the enterprises. Assessments collected
11 from the Federal Home Loan Banks shall not ex-
12 ceed the amounts sufficient to provide for the costs
13 and expenses described in subsection (a) relating to
14 the Federal Home Loan Banks.”;

15 (3) by striking subsection (c) and inserting the
16 following:

17 “(c) INCREASED COSTS OF REGULATION.—

18 “(1) INCREASE FOR INADEQUATE CAPITALIZA-
19 TION.—The semiannual payments made pursuant to
20 subsection (b) by any regulated entity that is not
21 classified (for purposes of subtitle B) as adequately
22 capitalized may be increased, as necessary, in the
23 discretion of the Director to pay additional esti-
24 mated costs of regulation of the regulated entity.

1 “(2) ADJUSTMENT FOR ENFORCEMENT ACTIVITIES.—The Director may adjust the amounts of any
2 TIES.—The Director may adjust the amounts of any
3 semiannual payments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the
4 discretion of the Director, to ensure that the costs
5 of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.
6 of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

7 “(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased
8 CIENCIES.—If at any time, as a result of increased
9 costs of regulation of a regulated entity that is not
10 classified (for purposes of subtitle B) as adequately
11 capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity,
12 the amount available from any semiannual payment
13 made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the
14 Agency with respect to such entity, the Director may
15 make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of
16 any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted
17 assessment, such remaining amount shall be deducted
18 assessment, such remaining amount shall be deducted
19 assessment, such remaining amount shall be deducted
20 assessment, such remaining amount shall be deducted
21 assessment, such remaining amount shall be deducted
22 assessment, such remaining amount shall be deducted
23 assessment, such remaining amount shall be deducted
24 assessment, such remaining amount shall be deducted

1 from the assessment for such regulated entity for
2 the following semiannual period.”;

3 (4) in subsection (d), by striking “If” and in-
4 serting “Except with respect to amounts collected
5 pursuant to subsection (a)(3), if”; and

6 (5) by striking subsections (e) through (g) and
7 inserting the following:

8 “(e) WORKING CAPITAL FUND.—At the end of each
9 year for which an assessment under this section is made,
10 the Director shall remit to each regulated entity any
11 amount of assessment collected from such regulated entity
12 that is attributable to subsection (a)(3) and is in excess
13 of the amount the Director deems necessary to maintain
14 a working capital fund.

15 “(f) TREATMENT OF ASSESSMENTS.—

16 “(1) DEPOSIT.—Amounts received by the Di-
17 rector from assessments under this section may be
18 deposited by the Director in the manner provided in
19 section 5234 of the Revised Statutes of the United
20 States (12 U.S.C. 192) for monies deposited by the
21 Comptroller of the Currency.

22 “(2) NOT GOVERNMENT FUNDS.—The amounts
23 received by the Director from any assessment under
24 this section shall not be construed to be Government
25 or public funds or appropriated money.

1 “(3) NO APPORTIONMENT OF FUNDS.—Not-
2 withstanding any other provision of law, the
3 amounts received by the Director from any assess-
4 ment under this section shall not be subject to ap-
5 portionment for the purpose of chapter 15 of title
6 31, United States Code, or under any other author-
7 ity.

8 “(4) USE OF FUNDS.—The Director may use
9 any amounts received by the Director from assess-
10 ments under this section for compensation of the Di-
11 rector and other employees of the Agency and for all
12 other expenses of the Director and the Agency.

13 “(5) AVAILABILITY OF OVERSIGHT FUND
14 AMOUNTS.—Notwithstanding any other provision of
15 law, any amounts remaining in the Federal Housing
16 Enterprises Oversight Fund established under this
17 section (as in effect before the effective date of the
18 Federal Housing Finance Regulatory Reform Act of
19 2008, and any amounts remaining from assessments
20 on the Federal Home Loan Banks pursuant to sec-
21 tion 18(b) of the Federal Home Loan Bank Act (12
22 U.S.C. 1438(b)), shall, upon such effective date, be
23 treated for purposes of this subsection as amounts
24 received from assessments under this section.

25 “(6) TREASURY INVESTMENTS.—

1 “(A) AUTHORITY.—The Director may re-
2 quest the Secretary of the Treasury to invest
3 such portions of amounts received by the Direc-
4 tor from assessments paid under this section
5 that, in the Director’s discretion, are not re-
6 quired to meet the current working needs of the
7 Agency.

8 “(B) GOVERNMENT OBLIGATIONS.—Pursu-
9 ant to a request under subparagraph (A), the
10 Secretary of the Treasury shall invest such
11 amounts in Government obligations guaranteed
12 as to principal and interest by the United
13 States with maturities suitable to the needs of
14 the Agency and bearing interest at a rate deter-
15 mined by the Secretary of the Treasury taking
16 into consideration current market yields on out-
17 standing marketable obligations of the United
18 States of comparable maturity.

19 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

20 “(1) FINANCIAL OPERATING PLANS AND FORE-
21 CASTS.—The Director shall provide to the Director
22 of the Office of Management and Budget copies of
23 the Director’s financial operating plans and fore-
24 casts, as prepared by the Director in the ordinary
25 course of the Agency’s operations, and copies of the

1 quarterly reports of the Agency’s financial condition
2 and results of operations, as prepared by the Direc-
3 tor in the ordinary course of the Agency’s oper-
4 ations.

5 “(2) FINANCIAL STATEMENTS.—The Agency
6 shall prepare annually a statement of—

7 “(A) assets and liabilities and surplus or
8 deficit;

9 “(B) income and expenses; and

10 “(C) sources and application of funds.

11 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
12 Agency shall implement and maintain financial man-
13 agement systems that—

14 “(A) comply substantially with Federal fi-
15 nancial management systems requirements and
16 applicable Federal accounting standards; and

17 “(B) use a general ledger system that ac-
18 counts for activity at the transaction level.

19 “(4) ASSERTION OF INTERNAL CONTROLS.—
20 The Director shall provide to the Comptroller Gen-
21 eral of the United States an assertion as to the ef-
22 fectiveness of the internal controls that apply to fi-
23 nancial reporting by the Agency, using the standards
24 established in section 3512(c) of title 31, United
25 States Code.

1 “(5) RULE OF CONSTRUCTION.—This sub-
2 section may not be construed as implying any obliga-
3 tion on the part of the Director to consult with or
4 obtain the consent or approval of the Director of the
5 Office of Management and Budget with respect to
6 any report, plan, forecast, or other information re-
7 ferred to in paragraph (1) or any jurisdiction or
8 oversight over the affairs or operations of the Agen-
9 cy.

10 “(h) AUDIT OF AGENCY.—

11 “(1) IN GENERAL.—The Comptroller General
12 shall annually audit the financial transactions of the
13 Agency in accordance with the United States gen-
14 erally accepted government auditing standards as
15 may be prescribed by the Comptroller General of the
16 United States. The audit shall be conducted at the
17 place or places where accounts of the Agency are
18 normally kept. The representatives of the Govern-
19 ment Accountability Office shall have access to the
20 personnel and to all books, accounts, documents, pa-
21 pers, records (including electronic records), reports,
22 files, and all other papers, automated data, things,
23 or property belonging to or under the control of or
24 used or employed by the Agency pertaining to its fi-
25 nancial transactions and necessary to facilitate the

1 audit, and such representatives shall be afforded full
2 facilities for verifying transactions with the balances
3 or securities held by depositories, fiscal agents, and
4 custodians. All such books, accounts, documents,
5 records, reports, files, papers, and property of the
6 Agency shall remain in possession and custody of
7 the Agency. The Comptroller General may obtain
8 and duplicate any such books, accounts, documents,
9 records, working papers, automated data and files,
10 or other information relevant to such audit without
11 cost to the Comptroller General and the Comptroller
12 General's right of access to such information shall
13 be enforceable pursuant to section 716(c) of title 31,
14 United States Code.

15 “(2) REPORT.—The Comptroller General shall
16 submit to the Congress a report of each annual
17 audit conducted under this subsection. The report to
18 the Congress shall set forth the scope of the audit
19 and shall include the statement of assets and liabil-
20 ities and surplus or deficit, the statement of income
21 and expenses, the statement of sources and applica-
22 tion of funds, and such comments and information
23 as may be deemed necessary to inform Congress of
24 the financial operations and condition of the Agency,
25 together with such recommendations with respect

1 thereto as the Comptroller General may deem advis-
2 able. A copy of each report shall be furnished to the
3 President and to the Agency at the time submitted
4 to the Congress.

5 “(3) ASSISTANCE AND COSTS.—For the purpose
6 of conducting an audit under this subsection, the
7 Comptroller General may, in the discretion of the
8 Comptroller General, employ by contract, without re-
9 gard to section 3709 of the Revised Statutes of the
10 United States (41 U.S.C. 5), professional services of
11 firms and organizations of certified public account-
12 ants for temporary periods or for special purposes.
13 Upon the request of the Comptroller General, the
14 Director of the Agency shall transfer to the Govern-
15 ment Accountability Office from funds available, the
16 amount requested by the Comptroller General to
17 cover the full costs of any audit and report con-
18 ducted by the Comptroller General. The Comptroller
19 General shall credit funds transferred to the account
20 established for salaries and expenses of the Govern-
21 ment Accountability Office, and such amount shall
22 be available upon receipt and without fiscal year lim-
23 itation to cover the full costs of the audit and re-
24 port.”.

1 **SEC. 107. REGULATIONS AND ORDERS.**

2 Section 1319G of the Federal Housing Enterprises
3 Financial Safety and Soundness Act of 1992 (12 U.S.C.
4 4526) is amended—

5 (1) by striking subsection (a) and inserting the
6 following:

7 “(a) **AUTHORITY.**—The Director shall issue any reg-
8 ulations, guidelines, or orders necessary to carry out the
9 duties of the Director under this title or the authorizing
10 statutes, and to ensure that the purposes of this title and
11 the authorizing statutes are accomplished.”; and

12 (2) by striking subsection (c).

13 **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS**
14 **STANDARDS.**

15 The Federal Housing Enterprises Financial Safety
16 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
17 amended by inserting after section 1313A, as added by
18 this Act, the following new section:

19 **“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS**
20 **STANDARDS.**

21 “(a) **STANDARDS.**—The Director shall establish
22 standards, by regulation or guideline, for each regulated
23 entity relating to—

24 “(1) adequacy of internal controls and informa-
25 tion systems taking into account the nature and
26 scale of business operations;

1 “(2) independence and adequacy of internal
2 audit systems;

3 “(3) management of interest rate risk exposure;

4 “(4) management of market risk, including
5 standards that provide for systems that accurately
6 measure, monitor, and control market risks and, as
7 warranted, that establish limitations on market risk;

8 “(5) adequacy and maintenance of liquidity and
9 reserves;

10 “(6) management of asset and investment port-
11 folio growth;

12 “(7) investments and acquisitions of assets by
13 a regulated entity, to ensure that they are consistent
14 with the purposes of this title and the authorizing
15 statutes;

16 “(8) overall risk management processes, includ-
17 ing adequacy of oversight by senior management and
18 the board of directors and of processes and policies
19 to identify, measure, monitor, and control material
20 risks, including reputational risks, and for adequate,
21 well-tested business resumption plans for all major
22 systems with remote site facilities to protect against
23 disruptive events;

24 “(9) management of credit and counterparty
25 risk, including systems to identify concentrations of

1 credit risk and prudential limits to restrict exposure
2 of the regulated entity to a single counterparty or
3 groups of related counterparties;

4 “(10) maintenance of adequate records, in ac-
5 cordance with consistent accounting policies and
6 practices that enable the Director to evaluate the fi-
7 nancial condition of the regulated entity; and

8 “(11) such other operational and management
9 standards as the Director determines to be appro-
10 priate.

11 “(b) FAILURE TO MEET STANDARDS.—

12 “(1) PLAN REQUIREMENT.—

13 “(A) IN GENERAL.—If the Director deter-
14 mines that a regulated entity fails to meet any
15 standard established under subsection (a)—

16 “(i) if such standard is established by
17 regulation, the Director shall require the
18 regulated entity to submit an acceptable
19 plan to the Director within the time al-
20 lowed under subparagraph (C); and

21 “(ii) if such standard is established by
22 guideline, the Director may require the
23 regulated entity to submit a plan described
24 in clause (i).

1 “(B) CONTENTS.—Any plan required
2 under subparagraph (A) shall specify the ac-
3 tions that the regulated entity will take to cor-
4 rect the deficiency. If the regulated entity is
5 undercapitalized, the plan may be a part of the
6 capital restoration plan for the regulated entity
7 under section 1369C.

8 “(C) DEADLINES FOR SUBMISSION AND
9 REVIEW.—The Director shall by regulation es-
10 tablish deadlines that—

11 “(i) provide the regulated entities with
12 reasonable time to submit plans required
13 under subparagraph (A), and generally re-
14 quire a regulated entity to submit a plan
15 not later than 30 days after the Director
16 determines that the entity fails to meet
17 any standard established under subsection
18 (a); and

19 “(ii) require the Director to act on
20 plans expeditiously, and generally not later
21 than 30 days after the plan is submitted.

22 “(2) REQUIRED ORDER UPON FAILURE TO SUB-
23 MIT OR IMPLEMENT PLAN.—If a regulated entity
24 fails to submit an acceptable plan within the time al-
25 lowed under paragraph (1)(C), or fails in any mate-

1 rial respect to implement a plan accepted by the Di-
2 rector, the following shall apply:

3 “(A) REQUIRED CORRECTION OF DEFICI-
4 CIENCY.—The Director shall, by order, require
5 the regulated entity to correct the deficiency.

6 “(B) OTHER AUTHORITY.—The Director
7 may, by order, take one or more of the fol-
8 lowing actions until the deficiency is corrected:

9 “(i) Prohibit the regulated entity from
10 permitting its average total assets (as such
11 term is defined in section 1316(b)) during
12 any calendar quarter to exceed its average
13 total assets during the preceding calendar
14 quarter, or restrict the rate at which the
15 average total assets of the entity may in-
16 crease from one calendar quarter to an-
17 other.

18 “(ii) Require the regulated entity—

19 “(I) in the case of an enterprise,
20 to increase its ratio of core capital to
21 assets.

22 “(II) in the case of a Federal
23 Home Loan Bank, to increase its
24 ratio of total capital (as such term is
25 defined in section 6(a)(5) of the Fed-

1 eral Home Loan Bank Act (12 U.S.C.
2 1426(a)(5)) to assets.

3 “(iii) Require the regulated entity to
4 take any other action that the Director de-
5 termines will better carry out the purposes
6 of this section than any of the actions de-
7 scribed in this subparagraph.

8 “(3) MANDATORY RESTRICTIONS.—In com-
9 plying with paragraph (2), the Director shall take
10 one or more of the actions described in clauses (i)
11 through (iii) of paragraph (2)(B) if—

12 “(A) the Director determines that the reg-
13 ulated entity fails to meet any standard pre-
14 scribed under subsection (a);

15 “(B) the regulated entity has not corrected
16 the deficiency; and

17 “(C) during the 18-month period before
18 the date on which the regulated entity first
19 failed to meet the standard, the entity under-
20 went extraordinary growth, as defined by the
21 Director.

22 “(c) OTHER ENFORCEMENT AUTHORITY NOT AF-
23 FECTED.—The authority of the Director under this sec-
24 tion is in addition to any other authority of the Director.”.

1 **SEC. 109. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
2 **ASSETS AND LIABILITIES.**

3 (a) IN GENERAL.—Subtitle B of the Federal Housing
4 Enterprises Financial Safety and Soundness Act of 1992
5 (12 U.S.C. 4611 et seq.) is amended—

6 (1) by striking the subtitle designation and
7 heading and inserting the following:

8 **“Subtitle B—Required Capital Lev-**
9 **els for Regulated Entities, Spe-**
10 **cial Enforcement Powers, and**
11 **Reviews of Assets and Liabil-**
12 **ities”;**

13 and

14 (2) by adding at the end the following new sec-
15 tion:

16 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**
17 **ITIES.**

18 “(a) IN GENERAL.—The Director shall, by regula-
19 tion, establish criteria governing the portfolio holdings of
20 the enterprises, to ensure that the holdings are backed by
21 sufficient capital and consistent with the mission and the
22 safe and sound operations of the enterprises. In estab-
23 lishing such criteria, the Director shall consider the ability
24 of the enterprises to provide a liquid secondary market
25 through securitization activities, the portfolio holdings in

1 relation to the overall mortgage market, and adherence to
2 the standards specified in section 1313B.

3 “(b) TEMPORARY ADJUSTMENTS.—The Director
4 may, by order, make temporary adjustments to the estab-
5 lished standards for an enterprise or both enterprises,
6 such as during times of economic distress or market dis-
7 ruption.

8 “(c) AUTHORITY TO REQUIRE DISPOSITION OR AC-
9 QUISSION.—The Director shall monitor the portfolio of
10 each enterprise. Pursuant to subsection (a) and notwith-
11 standing the capital classifications of the enterprises, the
12 Director may, by order, require an enterprise, under such
13 terms and conditions as the Director determines to be ap-
14 propriate, to dispose of or acquire any asset, if the Direc-
15 tor determines that such action is consistent with the pur-
16 poses of this Act or any of the authorizing statutes.”.

17 (b) REGULATIONS.—Not later than the expiration of
18 the 180-day period beginning on the effective date of this
19 Act, the Director shall issue regulations pursuant to sec-
20 tion 1369E(a) of the Federal Housing Enterprises Finan-
21 cial Safety and Soundness Act of 1992 (as added by sub-
22 section (a) of this section) establishing the portfolio hold-
23 ings standards under such section.

1 **SEC. 110. RISK-BASED CAPITAL REQUIREMENTS.**

2 (a) IN GENERAL.—Section 1361 of the Federal
3 Housing Enterprises Financial Safety and Soundness Act
4 of 1992 (12 U.S.C. 4611) is amended to read as follows:

5 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**
6 **ENTITIES.**

7 “(a) IN GENERAL.—

8 “(1) ENTERPRISES.—The Director shall, by
9 regulation, establish risk-based capital requirements
10 for the enterprises to ensure that the enterprises op-
11 erate in a safe and sound manner, maintaining suffi-
12 cient capital and reserves to support the risks that
13 arise in the operations and management of the en-
14 terprises.

15 “(2) FEDERAL HOME LOAN BANKS.—The Di-
16 rector shall establish risk-based capital standards
17 under section 6 of the Federal Home Loan Bank
18 Act for the Federal Home Loan Banks.

19 “(b) NO LIMITATION.—Nothing in this section shall
20 limit the authority of the Director to require other reports
21 or undertakings, or take other action, in furtherance of
22 the responsibilities of the Director under this Act.”.

23 (b) FEDERAL HOME LOAN BANKS RISK-BASED CAP-
24 ITAL.—Section 6(a)(3) of the Federal Home Loan Bank
25 Act (12 U.S.C. 1426(a)(3)) is amended—

1 (1) by striking subparagraph (A) and inserting
 2 the following:

3 “(A) RISK-BASED CAPITAL STANDARDS.—

4 The Director shall, by regulation, establish risk-
 5 based capital standards for the Federal Home
 6 Loan Banks to ensure that the Federal Home
 7 Loan Banks operate in a safe and sound man-
 8 ner, with sufficient permanent capital and re-
 9 serves to support the risks that arise in the op-
 10 erations and management of the Federal Home
 11 Loans Banks.”; and

12 (2) in subparagraph (B), by striking “(A)(ii)”
 13 and inserting “(A)”.

14 **SEC. 111. MINIMUM CAPITAL LEVELS.**

15 Section 1362 of the Federal Housing Enterprises Fi-
 16 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 17 4612) is amended—

18 (1) in subsection (a), by striking “IN GEN-
 19 ERAL” and inserting “ENTERPRISES”; and

20 (2) by striking subsection (b) and inserting the
 21 following:

22 “(b) FEDERAL HOME LOAN BANKS.—For purposes
 23 of this subtitle, the minimum capital level for each Federal
 24 Home Loan Bank shall be the minimum capital required
 25 to be maintained to comply with the leverage requirement

1 for the bank established under section 6(a)(2) of the Fed-
2 eral Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

3 “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-
4 ITAL LEVELS.—Notwithstanding subsections (a) and (b)
5 and notwithstanding the capital classifications of the regu-
6 lated entities, the Director may, by regulations issued
7 under section 1319G, establish a minimum capital level
8 for the enterprises, for the Federal Home Loan Banks,
9 or for both the enterprises and the banks, that is higher
10 than the level specified in subsection (a) for the enter-
11 prises or the level specified in subsection (b) for the Fed-
12 eral Home Loan Banks, to the extent needed to ensure
13 that the regulated entities operate in a safe and sound
14 manner.

15 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-
16 CREASE.—

17 “(1) IN GENERAL.—Notwithstanding sub-
18 sections (a) and (b) and any minimum capital level
19 established pursuant to subsection (c), the Director
20 may, by order, increase the minimum capital level
21 for a regulated entity on a temporary basis, when
22 the Director determines that such an increase is nec-
23 essary and consistent with the prudential regulation
24 and the safe and sound operations of a regulated en-
25 tity.

1 “(2) RESCISSION.—The Director shall rescind
2 any temporary minimum capital level established
3 under paragraph (1) when the Director determines
4 that the circumstances or facts no longer justify the
5 temporary minimum capital level.

6 “(3) REGULATIONS REQUIRED.—The Director
7 shall issue regulations establishing—

8 “(A) standards for the imposition of a
9 temporary increase in minimum capital under
10 paragraph (1);

11 “(B) the standards and procedures that
12 the Director will use to make the determination
13 referred to in paragraph (2); and

14 “(C) a reasonable time frame for periodic
15 review of any temporary increase in minimum
16 capital for the purpose of making the deter-
17 mination referred to in paragraph (2).

18 “(e) AUTHORITY TO ESTABLISH ADDITIONAL CAP-
19 ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR
20 PURPOSES.—The Director may, at any time by order or
21 regulation, establish such capital or reserve requirements
22 with respect to any product or activity of a regulated enti-
23 ty, as the Director considers appropriate to ensure that
24 the regulated entity operates in a safe and sound manner,
25 with sufficient capital and reserves to support the risks

1 that arise in the operations and management of the regu-
 2 lated entity.

3 “(f) PERIODIC REVIEW.—The Director shall periodi-
 4 cally review the amount of core capital maintained by the
 5 enterprises, the amount of capital retained by the Federal
 6 Home Loan Banks, and the minimum capital levels estab-
 7 lished for such regulated entities pursuant to this sec-
 8 tion.”.

9 **SEC. 112. REGISTRATION UNDER THE SECURITIES LAWS.**

10 The Securities Exchange Act of 1934 (15 U.S.C. 78a
 11 et seq.) is amended by adding at the end the following:

12 **“SEC. 38. FEDERAL NATIONAL MORTGAGE ASSOCIATION,**
 13 **FEDERAL HOME LOAN MORTGAGE CORPORA-**
 14 **TION, FEDERAL HOME LOAN BANKS.**

15 “(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION
 16 AND FEDERAL HOME LOAN MORTGAGE CORPORATION.—
 17 No class of equity securities of the Federal National Mort-
 18 gage Association or the Federal Home Loan Mortgage
 19 Corporation shall be treated as an exempted security for
 20 purposes of section 12, 13, 14, or 16.

21 “(b) FEDERAL HOME LOAN BANKS.—

22 “(1) REGISTRATION.—Each Federal Home
 23 Loan Bank shall register a class of its common
 24 stock under section 12(g), not later than 120 days
 25 after the date of enactment of the Federal Housing

1 Finance Regulatory Reform Act of 2008, and shall
 2 thereafter maintain such registration and be treated
 3 for purposes of this title as an ‘issuer’, the securities
 4 of which are required to be registered under section
 5 12, regardless of the number of members holding
 6 such stock at any given time.

7 “(2) STANDARDS RELATING TO AUDIT COMMIT-
 8 TEES.—Each Federal Home Loan Bank shall com-
 9 ply with the rules issued by the Commission under
 10 section 10A(m).

11 “(c) DEFINITIONS.—For purposes of this section, the
 12 following definitions shall apply:

13 “(1) FEDERAL HOME LOAN BANK; MEMBER.—
 14 The terms ‘Federal Home Loan Bank’ and ‘mem-
 15 ber’, have the same meanings as in section 2 of the
 16 Federal Home Loan Bank Act.

17 “(2) FEDERAL NATIONAL MORTGAGE ASSOCIA-
 18 TION.—The term ‘Federal National Mortgage Asso-
 19 ciation’ means the corporation created by the Fed-
 20 eral National Mortgage Association Charter Act.

21 “(3) FEDERAL HOME LOAN MORTGAGE COR-
 22 PORATION.—The term ‘Federal Home Loan Mort-
 23 gage Corporation’ means the corporation created by
 24 the Federal Home Loan Mortgage Corporation
 25 Act.”.

1 **SEC. 113. PROHIBITION AND WITHHOLDING OF EXECUTIVE**
2 **COMPENSATION.**

3 (a) IN GENERAL.—Section 1318 of the Federal
4 Housing Enterprises Financial Safety and Soundness Act
5 of 1992 (12 U.S.C. 4518) is amended—

6 (1) in the section heading, by striking “**OF EX-**
7 **CESSIVE**” and inserting “**AND WITHHOLDING OF**
8 **EXECUTIVE**”;

9 (2) by redesignating subsection (b) as sub-
10 section (d); and

11 (3) by inserting after subsection (a) the fol-
12 lowing:

13 “(b) FACTORS.—In making any determination under
14 subsection (a), the Director may take into consideration
15 any factors the Director considers relevant, including any
16 wrongdoing on the part of the executive officer, and such
17 wrongdoing shall include any fraudulent act or omission,
18 breach of trust or fiduciary duty, violation of law, rule,
19 regulation, order, or written agreement, and insider abuse
20 with respect to the regulated entity. The approval of an
21 agreement or contract pursuant to section 309(d)(3)(B)
22 of the Federal National Mortgage Association Charter Act
23 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the
24 Federal Home Loan Mortgage Corporation Act (12 U.S.C.
25 1452(h)(2)) shall not preclude the Director from making
26 any subsequent determination under subsection (a).

1 “(c) WITHHOLDING OF COMPENSATION.—In car-
2 rying out subsection (a), the Director may require a regu-
3 lated entity to withhold any payment, transfer, or dis-
4 bursement of compensation to an executive officer, or to
5 place such compensation in an escrow account, during the
6 review of the reasonableness and comparability of com-
7 pensation.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) FANNIE MAE.—Section 309(d) of the Fed-
10 eral National Mortgage Association Charter Act (12
11 U.S.C. 1723a(d)) is amended by adding at the end
12 the following new paragraph:

13 “(4) Notwithstanding any other provision of this sec-
14 tion, the corporation shall not transfer, disburse, or pay
15 compensation to any executive officer, or enter into an
16 agreement with such executive officer, without the ap-
17 proval of the Director, for matters being reviewed under
18 section 1318 of the Federal Housing Enterprises Finan-
19 cial Safety and Soundness Act of 1992 (12 U.S.C.
20 4518).”.

21 (2) FREDDIE MAC.—Section 303(h) of the Fed-
22 eral Home Loan Mortgage Corporation Act (12
23 U.S.C. 1452(h)) is amended by adding at the end
24 the following new paragraph:

1 “(4) Notwithstanding any other provision of this sec-
2 tion, the Corporation shall not transfer, disburse, or pay
3 compensation to any executive officer, or enter into an
4 agreement with such executive officer, without the ap-
5 proval of the Director, for matters being reviewed under
6 section 1318 of the Federal Housing Enterprises Finan-
7 cial Safety and Soundness Act of 1992 (12 U.S.C.
8 4518).”.

9 (3) FEDERAL HOME LOAN BANKS.—Section 7
10 of the Federal Home Loan Bank Act (12 U.S.C.
11 1427) is amended by adding at the end the following
12 new subsection:

13 “(1) WITHHOLDING OF COMPENSATION.—Notwith-
14 standing any other provision of this section, a Federal
15 Home Loan Bank shall not transfer, disburse, or pay com-
16 pensation to any executive officer, or enter into an agree-
17 ment with such executive officer, without the approval of
18 the Director, for matters being reviewed under section
19 1318 of the Federal Housing Enterprises Financial Safety
20 and Soundness Act of 1992 (12 U.S.C. 4518).”.

21 **SEC. 114. LIMIT ON GOLDEN PARACHUTES.**

22 Section 1318 of the Federal Housing Enterprises Fi-
23 nancial Safety and Soundness Act of 1992 (12 U.S.C.
24 4518) is amended by adding at the end the following:

1 “(e) AUTHORITY TO REGULATE OR PROHIBIT CER-
2 TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

3 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-
4 TION PAYMENTS.—The Director may prohibit or
5 limit, by regulation or order, any golden parachute
6 payment or indemnification payment.

7 “(2) FACTORS TO BE TAKEN INTO ACCOUNT.—
8 The Director shall prescribe, by regulation, the fac-
9 tors to be considered by the Director in taking any
10 action pursuant to paragraph (1), which may include
11 such factors as—

12 “(A) whether there is a reasonable basis to
13 believe that the affiliated party has committed
14 any fraudulent act or omission, breach of trust
15 or fiduciary duty, or insider abuse with regard
16 to the regulated entity that has had a material
17 effect on the financial condition of the regulated
18 entity;

19 “(B) whether there is a reasonable basis to
20 believe that the affiliated party is substantially
21 responsible for the insolvency of the regulated
22 entity, the appointment of a conservator or re-
23 ceiver for the regulated entity, or the troubled
24 condition of the regulated entity (as defined in
25 regulations prescribed by the Director);

1 “(C) whether there is a reasonable basis to
2 believe that the affiliated party has materially
3 violated any applicable provision of Federal or
4 State law or regulation that has had a material
5 effect on the financial condition of the regulated
6 entity;

7 “(D) whether the affiliated party was in a
8 position of managerial or fiduciary responsi-
9 bility; and

10 “(E) the length of time that the party was
11 affiliated with the regulated entity, and the de-
12 gree to which—

13 “(i) the payment reasonably reflects
14 compensation earned over the period of
15 employment; and

16 “(ii) the compensation involved rep-
17 resents a reasonable payment for services
18 rendered.

19 “(3) CERTAIN PAYMENTS PROHIBITED.—No
20 regulated entity may prepay the salary or any liabil-
21 ity or legal expense of any affiliated party if such
22 payment is made—

23 “(A) in contemplation of the insolvency of
24 such regulated entity, or after the commission
25 of an act of insolvency; and

1 “(B) with a view to, or having the result
2 of—

3 “(i) preventing the proper application
4 of the assets of the regulated entity to
5 creditors; or

6 “(ii) preferring one creditor over an-
7 other.

8 “(4) GOLDEN PARACHUTE PAYMENT DE-
9 FINED.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the term ‘golden parachute pay-
12 ment’ means any payment (or any agreement to
13 make any payment) in the nature of compensa-
14 tion by any regulated entity for the benefit of
15 any affiliated party pursuant to an obligation of
16 such regulated entity that—

17 “(i) is contingent on the termination
18 of such party’s affiliation with the regu-
19 lated entity; and

20 “(ii) is received on or after the date
21 on which—

22 “(I) the regulated entity became
23 insolvent;

1 “(II) any conservator or receiver
2 is appointed for such regulated entity;
3 or

4 “(III) the Director determines
5 that the regulated entity is in a trou-
6 bled condition (as defined in the regu-
7 lations of the Director).

8 “(B) CERTAIN PAYMENTS IN CONTEMPLA-
9 TION OF AN EVENT.—Any payment which
10 would be a golden parachute payment but for
11 the fact that such payment was made before the
12 date referred to in subparagraph (A)(ii) shall be
13 treated as a golden parachute payment if the
14 payment was made in contemplation of the oc-
15 currence of an event described in any subclause
16 of such subparagraph.

17 “(C) CERTAIN PAYMENTS NOT IN-
18 CLUDED.—For purposes of this subsection, the
19 term ‘golden parachute payment’ shall not in-
20 clude—

21 “(i) any payment made pursuant to a
22 retirement plan which is qualified (or is in-
23 tended to be qualified) under section 401
24 of the Internal Revenue Code of 1986, or
25 other nondiscriminatory benefit plan;

1 “(ii) any payment made pursuant to a
2 bona fide deferred compensation plan or
3 arrangement which the Director deter-
4 mines, by regulation or order, to be per-
5 missible; or

6 “(iii) any payment made by reason of
7 the death or disability of an affiliated
8 party.

9 “(5) OTHER DEFINITIONS.—For purposes of
10 this subsection, the following definitions shall apply:

11 “(A) INDEMNIFICATION PAYMENT.—Sub-
12 ject to paragraph (6), the term ‘indemnification
13 payment’ means any payment (or any agree-
14 ment to make any payment) by any regulated
15 entity for the benefit of any person who is or
16 was an affiliated party, to pay or reimburse
17 such person for any liability or legal expense
18 with regard to any administrative proceeding or
19 civil action instituted by the Agency which re-
20 sults in a final order under which such per-
21 son—

22 “(i) is assessed a civil money penalty;

23 “(ii) is removed or prohibited from
24 participating in conduct of the affairs of
25 the regulated entity; or

1 “(iii) is required to take any affirma-
2 tive action to correct certain conditions re-
3 sulting from violations or practices, by
4 order of the Director.

5 “(B) LIABILITY OR LEGAL EXPENSE.—The
6 term ‘liability or legal expense’ means—

7 “(i) any legal or other professional ex-
8 pense incurred in connection with any
9 claim, proceeding, or action;

10 “(ii) the amount of, and any cost in-
11 curred in connection with, any settlement
12 of any claim, proceeding, or action; and

13 “(iii) the amount of, and any cost in-
14 curred in connection with, any judgment or
15 penalty imposed with respect to any claim,
16 proceeding, or action.

17 “(C) PAYMENT.—The term ‘payment’ in-
18 cludes—

19 “(i) any direct or indirect transfer of
20 any funds or any asset; and

21 “(ii) any segregation of any funds or
22 assets for the purpose of making, or pursu-
23 ant to an agreement to make, any payment
24 after the date on which such funds or as-
25 sets are segregated, without regard to

1 whether the obligation to make such pay-
2 ment is contingent on—

3 “(I) the determination, after such
4 date, of the liability for the payment
5 of such amount; or

6 “(II) the liquidation, after such
7 date, of the amount of such payment.

8 “(6) CERTAIN COMMERCIAL INSURANCE COV-
9 ERAGE NOT TREATED AS COVERED BENEFIT PAY-
10 MENT.—No provision of this subsection shall be con-
11 strued as prohibiting any regulated entity from pur-
12 chasing any commercial insurance policy or fidelity
13 bond, except that, subject to any requirement de-
14 scribed in paragraph (5)(A)(iii), such insurance pol-
15 icy or bond shall not cover any legal or liability ex-
16 pense of the regulated entity which is described in
17 paragraph (5)(A).”.

18 **SEC. 115. REPORTING OF FRAUDULENT LOANS.**

19 Part 1 of subtitle C of the Federal Housing Enter-
20 prises Financial Safety and Soundness Act of 1992 (12
21 U.S.C. 4631 et seq.), as amended by this Act, is amended
22 by adding at the end the following:

23 **“SEC. 1379E. REPORTING OF FRAUDULENT LOANS.**

24 “(a) REQUIREMENT TO REPORT.—The Director
25 shall require a regulated entity to submit to the Director

1 a timely report upon discovery by the regulated entity that
2 it has purchased or sold a fraudulent loan or financial in-
3 strument, or suspects a possible fraud relating to the pur-
4 chase or sale of any loan or financial instrument. The Di-
5 rector shall require each regulated entity to establish and
6 maintain procedures designed to discover any such trans-
7 actions.

8 “(b) PROTECTION FROM LIABILITY FOR REPORTS.—
9 Any regulated entity that, in good faith, makes a report
10 pursuant to subsection (a), and any entity-affiliated party,
11 that, in good faith, makes or requires another to make
12 any such report, shall not be liable to any person under
13 any provision of law or regulation, any constitution, law,
14 or regulation of any State or political subdivision of any
15 State, or under any contract or other legally enforceable
16 agreement (including any arbitration agreement) for such
17 report or for any failure to provide notice of such report
18 to the person who is the subject of such report or any
19 other persons identified in the report.”.

1 **Subtitle B—Improvement of**
 2 **Mission Supervision**

3 **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**
 4 **ING GOAL OVERSIGHT.**

5 Part 2 of subtitle A of the Federal Housing Enter-
 6 prises Financial Safety and Soundness Act of 1992 (12
 7 U.S.C. 4541 et seq.) is amended—

8 (1) by striking the heading for the part and in-
 9 serting the following:

10 **“PART 2—ADDITIONAL AUTHORITIES OF THE**
 11 **DIRECTOR”;**

12 and

13 (2) by striking sections 1321 and 1322.

14 **SEC. 122. ASSUMPTION BY THE DIRECTOR OF CERTAIN**
 15 **OTHER HUD RESPONSIBILITIES.**

16 (a) IN GENERAL.—Part 2 of subtitle A of the Federal
 17 Housing Enterprises Financial Safety and Soundness Act
 18 of 1992 (12 U.S.C. 4541 et seq.) is amended—

19 (1) by striking “Secretary” each place that
 20 term appears and inserting “Director” in each of
 21 sections 1323, 1326, 1327, 1328, and 1336; and

22 (2) by striking sections 1337, 1338, and 1349
 23 (12 U.S.C. 4567, 4562 note, and 4589).

24 (b) RETENTION OF FAIR HOUSING RESPONSIBIL-
 25 ITIES.—Section 1325 of the Federal Housing Enterprises

1 Financial Safety and Soundness Act of 1992 (12 U.S.C.
 2 4545) is amended in the matter preceding paragraph (1),
 3 by inserting “of Housing and Urban Development” after
 4 “The Secretary”.

5 **SEC. 123. REVIEW OF ENTERPRISE PRODUCTS.**

6 Part 2 of subtitle A of the Federal Housing Enter-
 7 prises Financial Safety and Soundness Act of 1992 (12
 8 U.S.C. 4541 et seq.) is amended by inserting before sec-
 9 tion 1323 the following:

10 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS.**

11 “(a) IN GENERAL.—The Director shall require each
 12 enterprise to obtain the approval of the Director for any
 13 product of the enterprise before initially offering the prod-
 14 uct.

15 “(b) STANDARD FOR APPROVAL.—In considering any
 16 request for approval of a product pursuant to subsection
 17 (a), the Director shall make a determination that—

18 “(1) in the case of a product of the Federal Na-
 19 tional Mortgage Association, the product is author-
 20 ized under paragraph (2), (3), (4), or (5) of section
 21 302(b) or section 304 of the Federal National Mort-
 22 gage Association Charter Act (12 U.S.C. 1717(b),
 23 1719);

24 “(2) in the case of a product of the Federal
 25 Home Loan Mortgage Corporation, the product is

1 authorized under paragraph (1), (4), or (5) of sec-
2 tion 305(a) of the Federal Home Loan Mortgage
3 Corporation Act (12 U.S.C. 1454(a));

4 “(3) the product is in the public interest; and

5 “(4) the product is consistent with the safety
6 and soundness of the enterprise or the mortgage fi-
7 nance system.

8 “(c) PROCEDURE FOR APPROVAL.—

9 “(1) SUBMISSION OF REQUEST.—An enterprise
10 shall submit to the Director a written request for
11 approval of a product that describes the product in
12 such form as prescribed by order or regulation of the
13 Director.

14 “(2) REQUEST FOR PUBLIC COMMENT.—Imme-
15 diately upon receipt of a request for approval of a
16 product, as required under paragraph (1), the Direc-
17 tor shall publish notice of such request and of the
18 period for public comment pursuant to paragraph
19 (3) regarding the product, and a description of the
20 product proposed by the request. The Director shall
21 give interested parties the opportunity to respond in
22 writing to the proposed product.

23 “(3) PUBLIC COMMENT PERIOD.—During the
24 30-day period beginning on the date of publication
25 pursuant to paragraph (2) of a request for approval

1 of a product, the Director shall receive public com-
2 ments regarding the proposed product.

3 “(4) OFFERING OF PRODUCT.—

4 “(A) IN GENERAL.—Not later than 30
5 days after the close of the public comment pe-
6 riod described in paragraph (3), the Director
7 shall approve or deny the product, specifying
8 the grounds for such decision in writing.

9 “(B) FAILURE TO ACT.—If the Director
10 fails to act within the 30-day period described
11 in subparagraph (A), then the enterprise may
12 offer the product.

13 “(C) TEMPORARY APPROVAL.—The Direc-
14 tor may, subject to the rules of the Director,
15 provide for temporary approval of the offering
16 of a product without a public comment period,
17 if the Director finds that the existence of exi-
18 gent circumstances makes such delay contrary
19 to the public interest.

20 “(d) CONDITIONAL APPROVAL.—If the Director ap-
21 proves the offering of any product by an enterprise, the
22 Director may establish terms, conditions, or limitations
23 with respect to such product with which the enterprise
24 must comply in order to offer such product.

25 “(e) EXCLUSIONS.—

1 “(1) IN GENERAL.—The requirements of sub-
2 sections (a) through (d) do not apply with respect
3 to—

4 “(A) the automated loan underwriting sys-
5 tem of an enterprise in existence as of the date
6 of enactment of the Federal Housing Finance
7 Regulatory Reform Act of 2008, including any
8 upgrade to the technology, operating system, or
9 software to operate the underwriting system;

10 “(B) any modification to the mortgage
11 terms and conditions or mortgage underwriting
12 criteria relating to the mortgages that are pur-
13 chased or guaranteed by an enterprise, provided
14 that such modifications do not alter the under-
15 lying transaction so as to include services or fi-
16 nancing, other than residential mortgage fi-
17 nancing; or

18 “(C) any other activity that is substantially
19 similar, as determined by rule of the Director
20 to—

21 “(i) the activities described in sub-
22 paragraphs (A) and (B); and

23 “(ii) other activities that have been
24 approved by the Director in accordance
25 with this section.

1 “(2) EXPEDITED REVIEW.—

2 “(A) ENTERPRISE NOTICE.—For any new
3 activity that an enterprise considers not to be
4 a product, the enterprise shall provide written
5 notice to the Director of such activity, and may
6 not commence such activity until the date of re-
7 ceipt of a notice under subparagraph (B) or the
8 expiration of the period described in subpara-
9 graph (C). The Director shall establish, by reg-
10 ulation, the form and content of such written
11 notice.

12 “(B) DIRECTOR DETERMINATION.—Not
13 later than 15 days after the date of receipt of
14 a notice under subparagraph (A), the Director
15 shall determine whether such activity is a prod-
16 uct subject to approval under this section. The
17 Director shall, immediately upon so deter-
18 mining, notify the enterprise.

19 “(C) FAILURE TO ACT.—If the Director
20 fails to determine whether such activity is a
21 product within the 15-day period described in
22 subparagraph (B), the enterprise may com-
23 mence the new activity in accordance with sub-
24 paragraph (A).

1 “(f) NO LIMITATION.—Nothing in this section may
2 be construed to restrict—

3 “(1) the safety and soundness authority of the
4 Director over all new and existing products or activi-
5 ties; or

6 “(2) the authority of the Director to review all
7 new and existing products or activities to determine
8 that such products or activities are consistent with
9 the statutory mission of an enterprise.”.

10 **SEC. 124. CONFORMING LOAN LIMITS.**

11 (a) FANNIE MAE.—

12 (1) GENERAL LIMIT.—Section 302(b)(2) of the
13 Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1717(b)(2)) is amended by striking the
15 7th and 8th sentences and inserting the following
16 new sentences: “Such limitations shall not exceed
17 \$417,000 for a mortgage secured by a single-family
18 residence, \$533,850 for a mortgage secured by a 2-
19 family residence, \$645,300 for a mortgage secured
20 by a 3-family residence, and \$801,950 for a mort-
21 gage secured by a 4-family residence, except that
22 such maximum limitations shall be adjusted effective
23 January 1 of each year beginning after the effective
24 date of Federal Housing Finance Regulatory Reform
25 Act of 2008, subject to the limitations in this para-

1 graph. Each adjustment shall be made by adding to
2 each such amount (as it may have been previously
3 adjusted) a percentage thereof equal to the percent-
4 age increase, during the most recent 12-month or
5 4th-quarter period ending before the time of deter-
6 mining such annual adjustment, in the housing price
7 index maintained by the Director of the Federal
8 Housing Finance Agency (pursuant to section 1322
9 of the Federal Housing Enterprises Financial Safety
10 and Soundness Act of 1992 (12 U.S.C. 4541)). If
11 the change in such house price index during the
12 most recent 12-month or 4th-quarter period ending
13 before the time of determining such annual adjust-
14 ment is a decrease, then no adjustment shall be
15 made for the next year, and the next adjustment
16 shall take into account prior declines in the house
17 price index, so that any adjustment shall reflect the
18 net change in the house price index since the last
19 adjustment. Declines in the house price index shall
20 be accumulated and then reduce increases until sub-
21 sequent increases exceed prior declines.”.

22 (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)
23 of the Federal National Mortgage Association Char-
24 ter Act (12 U.S.C. 1717(b)(2)) is amended by add-
25 ing after the period at the end the following: “Such

1 foregoing limitations shall also be increased with re-
2 spect to properties of a particular size located in any
3 area for which the median price for such size resi-
4 dence exceeds the foregoing limitation for such size
5 residence, to the lesser of 150 percent of such fore-
6 going limitation for such size residence or the
7 amount that is equal to the median price in such
8 area for such size residence.”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by paragraphs (1) and (2) of this subsection shall
11 take effect upon the expiration of the date described
12 in section 201(a) of the Economic Stimulus Act of
13 2008 (Public Law 110–185).

14 (b) FREDDIE MAC.—

15 (1) GENERAL LIMIT.—Section 305(a)(2) of the
16 Federal Home Loan Mortgage Corporation Act (12
17 U.S.C. 1454(a)(2)) is amended by striking the 6th
18 and 7th sentences and inserting the following new
19 sentences: “Such limitations shall not exceed
20 \$417,000 for a mortgage secured by a single-family
21 residence, \$533,850 for a mortgage secured by a 2-
22 family residence, \$645,300 for a mortgage secured
23 by a 3-family residence, and \$801,950 for a mort-
24 gage secured by a 4-family residence, except that
25 such maximum limitations shall be adjusted effective

1 January 1 of each year beginning after the effective
2 date of the Federal Housing Finance Regulatory Re-
3 form Act of 2008, subject to the limitations in this
4 paragraph. Each adjustment shall be made by add-
5 ing to each such amount (as it may have been pre-
6 viously adjusted) a percentage thereof equal to the
7 percentage increase, during the most recent 12-
8 month or fourth-quarter period ending before the
9 time of determining such annual adjustment, in the
10 housing price index maintained by the Director of
11 the Federal Housing Finance Agency (pursuant to
12 section 1322 of the Federal Housing Enterprises Fi-
13 nancial Safety and Soundness Act of 1992 (12
14 U.S.C. 4541)). If the change in such house price
15 index during the most recent 12-month or 4th-quar-
16 ter period ending before the time of determining
17 such annual adjustment is a decrease, then no ad-
18 justment shall be made for the next year, and the
19 next adjustment shall take into account prior de-
20 clines in the house price index, so that any adjust-
21 ment shall reflect the net change in the house price
22 index since the last adjustment. Declines in the
23 house price index shall be accumulated and then re-
24 duce increases until subsequent increases exceed
25 prior declines.”.

1 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)
2 of the Federal Home Loan Mortgage Corporation
3 Act is amended by adding after the period at the
4 end the following: “Such foregoing limitations shall
5 also be increased with respect to properties of a par-
6 ticular size located in any area for which the median
7 price for such size residence exceeds the foregoing
8 limitation for such size residence, to the lesser of
9 150 percent of such foregoing limitation for such
10 size residence or the amount that is equal to the me-
11 dian price in such area for such size residence.”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by paragraphs (1) and (2) of this subsection shall
14 take effect upon the expiration of the date described
15 in section 201(a) of the Economic Stimulus Act of
16 2008 (Public Law 110–185).

17 (c) SENSE OF CONGRESS.—It is the sense of the Con-
18 gress that the securitization of mortgages by the Federal
19 National Mortgage Association and the Federal Home
20 Loan Mortgage Corporation plays an important role in
21 providing liquidity to the United States housing markets.
22 Therefore, the Congress encourages the Federal National
23 Mortgage Association and the Federal Home Loan Mort-
24 gage Corporation to securitize mortgages acquired under

1 the increased conforming loan limits established under this
2 Act.

3 (d) HOUSING PRICE INDEX.—Part 2 of subtitle A of
4 the Federal Housing Enterprises Financial Safety and
5 Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amend-
6 ed by inserting after section 1321 (as added by section
7 123 of this Act) the following new section:

8 **“SEC. 1322. HOUSING PRICE INDEX.**

9 “The Director shall establish and maintain a method
10 of assessing the national average 1-family house price for
11 use for adjusting the conforming loan limitations of the
12 enterprises. In establishing such method, the Director
13 shall take into consideration the monthly survey of all
14 major lenders conducted by the Federal Housing Finance
15 Agency to determine the national average 1-family house
16 price, the House Price Index maintained by the Office of
17 Federal Housing Enterprise Oversight of the Department
18 of Housing and Urban Development before the effective
19 date of the Federal Housing Finance Regulatory Reform
20 Act of 2008, any appropriate house price indexes of the
21 Bureau of the Census of the Department of Commerce,
22 and any other indexes or measures that the Director con-
23 siderers appropriate.”.

1 **SEC. 125. ANNUAL HOUSING REPORT.**

2 (a) REPEAL.—Section 1324 of the Federal Housing
3 Enterprises Financial Safety and Soundness Act of 1992
4 (12 U.S.C. 4544) is hereby repealed.

5 (b) ANNUAL HOUSING REPORT.—The Federal Hous-
6 ing Enterprises Financial Safety and Soundness Act of
7 1992 is amended by inserting after section 1323 the fol-
8 lowing:

9 **“SEC. 1324. ANNUAL HOUSING REPORT.**

10 “(a) IN GENERAL.—After reviewing and analyzing
11 the reports submitted under section 309(n) of the Federal
12 National Mortgage Association Charter Act and section
13 307(f) of the Federal Home Loan Mortgage Corporation
14 Act, the Director shall submit a report, not later than Oc-
15 tober 30 of each year, to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and the Com-
17 mittee on Financial Services of the House of Representa-
18 tives, on the activities of each enterprise.

19 “(b) CONTENTS.—The report required under sub-
20 section (a) shall—

21 “(1) discuss—

22 “(A) the extent to and manner in which—

23 “(i) each enterprise is achieving the
24 annual housing goals established under
25 subpart B;

1 “(ii) each enterprise is complying with
2 its duty to serve underserved markets, as
3 established under section 1335;

4 “(iii) each enterprise received credit
5 towards achieving each of its goals result-
6 ing from a transaction or activity pursuant
7 to section 1331(b)(2); and

8 “(iv) each enterprise is achieving the
9 purposes of the enterprise established by
10 law; and

11 “(B) the actions that each enterprise could
12 undertake to promote and expand the purposes
13 of the enterprise;

14 “(2) aggregate and analyze relevant data on in-
15 come to assess the compliance of each enterprise
16 with the housing goals established under subpart B;

17 “(3) aggregate and analyze data on income,
18 race, and gender by census tract and other relevant
19 classifications, and compare such data with larger
20 demographic, housing, and economic trends;

21 “(4) identify the extent to which each enter-
22 prise is involved in mortgage purchases and sec-
23 ondary market activities involving subprime and
24 nontraditional loans;

1 “(5) compare the characteristics of subprime
 2 and nontraditional loans both purchased and
 3 securitized by each enterprise to other loans pur-
 4 chased and securitized by each enterprise; and

5 “(6) compare the characteristics of high-cost
 6 loans purchased and securitized, where such securi-
 7 ties are not held on portfolio to loans purchased and
 8 securitized, where such securities are either retained
 9 on portfolio or repurchased by the enterprise, includ-
 10 ing such characteristics as—

11 “(A) the purchase price of the property
 12 that secures the mortgage;

13 “(B) the loan-to-value ratio of the mort-
 14 gage, which shall reflect any secondary liens on
 15 the relevant property;

16 “(C) the terms of the mortgage;

17 “(D) the creditworthiness of the borrower;

18 and

19 “(E) any other relevant data, as deter-
 20 mined by the Director.

21 “(c) DATA COLLECTION AND REPORTING.—

22 “(1) IN GENERAL.—To assist the Director in
 23 analyzing the matters described in subsection (b),
 24 the Director shall conduct, on a monthly basis, a

1 survey of mortgage markets in accordance with this
2 subsection.

3 “(2) DATA POINTS.—Each monthly survey con-
4 ducted by the Director under paragraph (1) shall
5 collect data on—

6 “(A) the characteristics of individual mort-
7 gages that are eligible for purchase by the en-
8 terprises and the characteristics of individual
9 mortgages that are not eligible for purchase by
10 the enterprises including, in both cases, infor-
11 mation concerning—

12 “(i) the price of the house that se-
13 cures the mortgage;

14 “(ii) the loan-to-value ratio of the
15 mortgage, which shall reflect any sec-
16 ondary liens on the relevant property;

17 “(iii) the terms of the mortgage;

18 “(iv) the creditworthiness of the bor-
19 rower or borrowers; and

20 “(v) whether the mortgage, in the
21 case of a conforming mortgage, was pur-
22 chased by an enterprise;

23 “(B) the characteristics of individual
24 subprime and nontraditional mortgages that are
25 eligible for purchase by the enterprises and the

1 characteristics of borrowers under such mort-
2 gages, including the creditworthiness of such
3 borrowers and determination whether such bor-
4 rowers would qualify for prime lending; and

5 “(C) such other matters as the Director
6 determines to be appropriate.

7 “(3) PUBLIC AVAILABILITY.—The Director
8 shall make any data collected by the Director in con-
9 nection with the conduct of a monthly survey avail-
10 able to the public in a timely manner, provided that
11 the Director may modify the data released to the
12 public to ensure that the data—

13 “(A) is not released in an identifiable
14 form; and

15 “(B) is not otherwise obtainable from
16 other publicly available data sets.

17 “(4) DEFINITION.—For purposes of this sub-
18 section, the term ‘identifiable form’ means any rep-
19 resentation of information that permits the identity
20 of a borrower to which the information relates to be
21 reasonably inferred by either direct or indirect
22 means.”.

1 **SEC. 126. PUBLIC USE DATABASE.**

2 Section 1323 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 (42 U.S.C.
4 4543) is amended—

5 (1) in subsection (a)—

6 (A) by striking “(a) IN GENERAL.—The
7 Secretary” and inserting the following:

8 “(a) AVAILABILITY.—

9 “(1) IN GENERAL.—The Director”; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(2) CENSUS TRACT LEVEL REPORTING.—Such
13 data shall include the data elements required to be
14 reported under the Home Mortgage Disclosure Act
15 of 1975, at the census tract level.”;

16 (2) in subsection (b)(2), by inserting before the
17 period at the end the following: “or with subsection
18 (a)(2)”; and

19 (3) by adding at the end the following new sub-
20 section:

21 “(d) TIMING.—Data submitted under this section by
22 an enterprise in connection with a provision referred to
23 in subsection (a) shall be made publicly available in ac-
24 cordance with this section not later than September 30
25 of the year following the year to which the data relates.”.

1 **SEC. 127. REPORTING OF MORTGAGE DATA.**

2 Section 1326 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
4 4546) is amended—

5 (1) in subsection (a), by striking “The Direc-
6 tor” and inserting “Subject to subsection (d), the
7 Director”; and

8 (2) by adding at the end the following:

9 “(d) MORTGAGE INFORMATION.—Subject to privacy
10 considerations, as described in section 304(j) of the Home
11 Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(j)), the
12 Director shall, by regulation or order, provide that certain
13 information relating to single family mortgage data of the
14 enterprises shall be disclosed to the public, in order to
15 make available to the public—

16 “(1) the same data from the enterprises that is
17 required of insured depository institutions under the
18 Home Mortgage Disclosure Act of 1975; and

19 “(2) information collected by the Director
20 under section 1324(b)(6).”.

21 **SEC. 128. REVISION OF HOUSING GOALS.**

22 (a) REPEAL.—Sections 1331 through 1334 of the
23 Federal Housing Enterprises Financial Safety and Sound-
24 ness Act of 1992 (12 U.S.C. 4561 through 4564) are here-
25 by repealed.

1 (b) HOUSING GOAL.—The Federal Housing Enter-
2 prises Financial Safety and Soundness Act of 1992 is
3 amended by inserting before section 1335 the following:

4 **“SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.**

5 “(a) IN GENERAL.—The Director shall, by regula-
6 tion, establish effective for the first calendar year that be-
7 gins after the date of enactment of the Federal Housing
8 Finance Regulatory Reform Act of 2008, and each year
9 thereafter, annual housing goals, as described under this
10 subpart, with respect to the mortgage purchases by the
11 enterprises.

12 **“(b) SPECIAL COUNTING REQUIREMENTS.—**

13 “(1) IN GENERAL.—The Director shall deter-
14 mine whether an enterprise shall receive full, partial,
15 or no credit for a transaction toward achievement of
16 any of the housing goals established pursuant to this
17 section or sections 1332 through 1334.

18 “(2) CONSIDERATIONS.—In making any deter-
19 mination under paragraph (1), the Director shall
20 consider whether a transaction or activity of an en-
21 terprise is substantially equivalent to a mortgage
22 purchase and either (A) creates a new market, or
23 (B) adds liquidity to an existing market, provided
24 however that the terms and conditions of such mort-
25 gage purchase is neither determined to be unaccept-

1 able, nor contrary to good lending practices, and
2 otherwise promotes sustainable homeownership and
3 further, that such mortgage purchase actually fulfills
4 the purposes of the enterprise and is in accordance
5 with the chartering Act of such enterprise.

6 “(c) ELIMINATING INTEREST RATE DISPARITIES.—

7 “(1) IN GENERAL.—In establishing and imple-
8 menting the housing goals under this subpart, the
9 Director shall require the enterprises to disclose ap-
10 propriate information to allow the Director to assess
11 if there are any disparities in interest rates charged
12 on mortgages to borrowers who are minorities, as
13 compared with borrowers of similar creditworthiness
14 who are not minorities, as evidenced in reports pur-
15 suant to the Home Mortgage Disclosure Act of
16 1975.

17 “(2) REPORT TO CONGRESS ON DISPARITIES.—

18 Upon a finding by the Director that a pattern of dis-
19 parities in interest rates exists pursuant to the infor-
20 mation provided by an enterprise under paragraph
21 (1), the Director shall—

22 “(A) forward to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate
24 and the Committee on Financial Services of the

1 House of Representatives a report detailing the
2 disparities; and

3 “(B) forward the report prepared under
4 subparagraph (A) to any other appropriate reg-
5 ulatory or enforcement agency.

6 “(3) IDENTITY OF INDIVIDUALS NOT DIS-
7 CLOSED.—In carrying out this subsection, the Direc-
8 tor shall ensure that no personally identifiable finan-
9 cial information that would enable an individual bor-
10 rower to be reasonably identified shall be made pub-
11 lic.

12 “(d) TIMING.—The Director shall establish an an-
13 nual deadline for the establishment of housing goals de-
14 scribed in subsection (a), taking into consideration the
15 need for the enterprises to reasonably and sufficiently plan
16 their operations and activities in advance, including oper-
17 ations and activities necessary to meet such goals.

18 **“SEC. 1331A. DISCRETIONARY ADJUSTMENT OF HOUSING**
19 **GOALS.**

20 “(a) AUTHORITY.—

21 “(1) REVIEW.—The Director shall review the
22 appropriateness of each goal established pursuant to
23 this subpart at least once during each year to assure
24 that given current market conditions that each such
25 goal is feasible.

1 “(2) PETITION TO REDUCE.—An enterprise
2 may petition the Director in writing at any time
3 during a year to reduce the level of any goal for
4 such year established pursuant to this subpart.

5 “(b) STANDARD FOR REDUCTION.—The Director
6 may reduce the level for a goal pursuant to such a petition
7 only if—

8 “(1) market and economic conditions or the fi-
9 nancial condition of the enterprise require such ac-
10 tion; or

11 “(2) efforts to meet the goal would result in the
12 constraint of liquidity, over-investment in certain
13 market segments, or other consequences contrary to
14 the intent of this subpart, section 301(3) of the Fed-
15 eral National Mortgage Association Charter Act (12
16 U.S.C. 1716(3)), or section 301(b)(3) of the Federal
17 Home Loan Mortgage Corporation Act (12 U.S.C.
18 1451 note), as applicable.

19 “(c) DETERMINATION.—

20 “(1) 30-DAY PERIOD.—If an enterprise submits
21 a petition for reduction to the Director under sub-
22 section (a)(2), the Director shall make a determina-
23 tion regarding any proposed reduction within 30
24 days of receipt of the petition.

1 “(2) EXTENSION.—The Director may extend
 2 the period described in paragraph (1) for a single
 3 additional 15-day period, but only if the Director re-
 4 quests additional information from the enterprise.

5 **“SEC. 1332. SINGLE-FAMILY HOUSING GOALS.**

6 “(a) ESTABLISHMENT OF GOALS.—

7 “(1) IN GENERAL.—The Director shall establish
 8 annual goals for the purchase by each enterprise of
 9 conventional, conforming, single-family, owner-occu-
 10 pied, purchase money mortgages financing housing
 11 for each of the following:

12 “(A) Low-income families.

13 “(B) Families that reside in low-income
 14 areas.

15 “(C) Very low-income families.

16 “(2) GOALS AS PERCENTAGE OF TOTAL PUR-
 17 CHASE MONEY MORTGAGE PURCHASES.—The goals
 18 established under paragraph (1) shall be established
 19 as a percentage of the total number of single-family
 20 dwelling units financed by single-family purchase
 21 money mortgage purchases of the enterprise.

22 “(b) DETERMINATION OF COMPLIANCE.—

23 “(1) IN GENERAL.—The Director shall deter-
 24 mine, for each year that the housing goals under
 25 this section are in effect pursuant to section

1 1331(a), whether each enterprise has complied with
2 the single-family housing goals established under
3 this section for such year.

4 “(2) COMPLIANCE REQUIREMENTS.—An enter-
5 prise shall be considered to be in compliance with a
6 goal described under subsection (a) for a year, only
7 if, for each of the types of families described in sub-
8 section (a), the percentage of the number of conven-
9 tional, conforming, single-family, owner-occupied,
10 purchase money mortgages purchased by the enter-
11 prise in such year that serve such families, meets or
12 exceeds the target established under subsection (c)
13 for the year for such type of family.

14 “(c) ANNUAL TARGETS.—

15 “(1) IN GENERAL.—The Director shall establish
16 annual targets for each goal described in subsection
17 (a).

18 “(2) CONSIDERATIONS.—In establishing annual
19 targets under paragraph (1), the Director shall con-
20 sider—

21 “(A) national housing needs;

22 “(B) economic, housing, and demographic
23 conditions;

1 “(C) the performance and effort of the en-
2 terprises toward achieving the housing goals
3 under this section in previous years;

4 “(D) the ability of the enterprise to lead
5 the industry in making mortgage credit avail-
6 able;

7 “(E) recent information submitted in com-
8 pliance with the Home Mortgage Disclosure Act
9 of 1975 and such other reliable mortgage data
10 as may be available;

11 “(F) the size of the purchase money con-
12 ventional mortgage market serving each of the
13 types of families described in subsection (a),
14 relative to the size of the overall purchase
15 money mortgage market; and

16 “(G) the need to maintain the sound finan-
17 cial condition of the enterprises.

18 “(3) HIGH-COST LOANS AND INAPPROPRIATE
19 LENDING PRACTICES.—In establishing annual tar-
20 gets under paragraph (1), the Director shall not
21 consider segments of the market determined to be
22 unacceptable or contrary to good lending practices
23 pursuant to section 1331(b)(2).

24 “(d) NOTICE OF DETERMINATION AND ENTERPRISE
25 COMMENT.—

1 “(1) NOTICE.—Within 30 days of making a de-
2 termination under subsection (b) regarding compli-
3 ance of an enterprise for a year with the housing
4 goals established under this section and before any
5 public disclosure thereof, the Director shall provide
6 notice of the determination to the enterprise, which
7 shall include an analysis and comparison, by the Di-
8 rector, of the performance of the enterprise for the
9 year and the targets for the year under subsection
10 (c).

11 “(2) COMMENT PERIOD.—The Director shall
12 provide each enterprise and the public an oppor-
13 tunity to comment on the determination during the
14 30-day period beginning upon receipt by the enter-
15 prise of the notice.

16 “(e) USE OF BORROWER INCOME.—In monitoring
17 the performance of each enterprise pursuant to the hous-
18 ing goals under this section and evaluating such perform-
19 ance (for purposes of section 1336), the Director shall
20 consider a mortgagor’s income to be the income of the
21 mortgagor at the time of origination of the mortgage.

22 “(f) CONSIDERATION OF PROPERTIES WITH RENTAL
23 UNITS.—Mortgages financing 1-to-4 unit owner-occupied
24 properties shall count toward the achievement of the sin-
25 gle-family housing goal under this section, if such prop-

1 erties otherwise meet the requirements under this section
 2 notwithstanding the use of 1 or more units for rental pur-
 3 poses.

4 **“SEC. 1333. SINGLE-FAMILY HOUSING REFINANCE GOALS.**

5 “(a) PREPAYMENT OF EXISTING LOANS.—

6 “(1) IN GENERAL.—The Director shall establish
 7 annual goals for the purchase by each enterprise of
 8 mortgages on conventional, conforming, single-fam-
 9 ily, owner-occupied housing given to pay off or pre-
 10 pay an existing loan served by the same property for
 11 each of the following:

12 “(A) Low-income families.

13 “(B) Families that reside in low-income
 14 areas.

15 “(C) Very low-income families.

16 “(2) GOALS AS PERCENTAGE OF TOTAL REFI-
 17 NANCING MORTGAGE PURCHASES.—The goals de-
 18 scribed under paragraph (1) shall be established as
 19 a percentage of the total number of single-family
 20 dwelling units refinanced by mortgage purchases of
 21 each enterprise.

22 “(b) DETERMINATION OF COMPLIANCE.—

23 “(1) IN GENERAL.—The Director shall deter-
 24 mine, for each year that the housing goals under
 25 this section are in effect pursuant to section

1 1331(a), whether each enterprise has complied with
2 the single-family housing refinance goals established
3 under this section for such year.

4 “(2) COMPLIANCE.—An enterprise shall be con-
5 sidered to be in compliance with the goals of this
6 section for a year, only if, for each of the types of
7 families described in subsection (a), the percentage
8 of the number of conventional, conforming, single-
9 family, owner-occupied refinancing mortgages pur-
10 chased by each enterprise in such year that serve
11 such families, meets or exceeds the target for the
12 year for such type of family that is established under
13 subsection (c).

14 “(c) ANNUAL TARGETS.—

15 “(1) IN GENERAL.—The Director shall establish
16 annual targets for each goal described in subsection
17 (a).

18 “(2) CONSIDERATIONS.—In establishing annual
19 targets under paragraph (1), the Director shall con-
20 sider—

21 “(A) national housing needs;

22 “(B) economic, housing, and demographic
23 conditions;

1 “(C) the performance and effort of the en-
 2 terprises toward achieving the housing goals
 3 under this section in previous years;

4 “(D) the ability of the enterprise to lead
 5 the industry in making mortgage credit avail-
 6 able;

7 “(E) recent information submitted in com-
 8 pliance with the Home Mortgage Disclosure Act
 9 of 1975 and such other reliable mortgage data
 10 as may be available;

11 “(F) the size of the purchase money con-
 12 ventional mortgage market serving each of the
 13 types of families described in subsection (a),
 14 relative to the size of the overall purchase
 15 money mortgage market; and

16 “(G) the need to maintain the sound finan-
 17 cial condition of the enterprises.

18 “(d) NOTICE OF DETERMINATION AND ENTERPRISE
 19 COMMENT.—

20 “(1) NOTICE.—Within 30 days of making a de-
 21 termination under subsection (b) regarding compli-
 22 ance of an enterprise for a year with the housing
 23 goals established under this section and before any
 24 public disclosure thereof, the Director shall provide
 25 notice of the determination to the enterprise, which

1 shall include an analysis and comparison, by the Di-
 2 rector, of the performance of the enterprise for the
 3 year and the targets for the year under subsection
 4 (c).

5 “(2) COMMENT PERIOD.—The Director shall
 6 provide each enterprise and the public an oppor-
 7 tunity to comment on the determination during the
 8 30-day period beginning upon receipt by the enter-
 9 prise of the notice.

10 “(e) USE OF BORROWER INCOME.—In monitoring
 11 the performance of each enterprise pursuant to the hous-
 12 ing goals under this section and evaluating such perform-
 13 ance (for purposes of section 1336), the Director shall
 14 consider a mortgagor’s income to be the income of the
 15 mortgagor at the time of origination of the mortgage.

16 **“SEC. 1334. MULTIFAMILY SPECIAL AFFORDABLE HOUSING**
 17 **GOAL.**

18 “(a) ESTABLISHMENT.—

19 “(1) IN GENERAL.—The Director shall estab-
 20 lish, by regulation, by unit, dollar volume, or per-
 21 centage of multifamily activity, as determined by the
 22 Director, an annual goal for the purchase by each
 23 enterprise of—

24 “(A) mortgages that finance dwelling units
 25 affordable to very low-income families; and

1 “(B) mortgages that finance dwelling units
2 assisted by the low-income housing tax credit
3 under section 42 of the Internal Revenue Code
4 of 1986.

5 “(2) ADDITIONAL REQUIREMENTS FOR SMALL-
6 ER PROJECTS.—The Director shall establish, within
7 the housing goal established under this section, addi-
8 tional requirements for the purchase by each enter-
9 prise of mortgages described in paragraph (1) for
10 multifamily housing projects of a smaller or limited
11 size, which may be based on the number of dwelling
12 units in the project or the amount of the mortgage,
13 or both, and shall include multifamily housing
14 projects of 5 to 50 units (as adjusted by the Direc-
15 tor), or with mortgages of up to \$5,000,000 (as ad-
16 justed by the Director).

17 “(3) FACTORS.—The Director shall establish
18 the goal and additional requirements under this sec-
19 tion taking into consideration—

20 “(A) national multifamily mortgage credit
21 needs;

22 “(B) the performance and effort of the en-
23 terprise in making mortgage credit available for
24 multifamily housing in previous years;

1 “(C) the size of the multifamily mortgage
2 market, including the size of the small multi-
3 family mortgage market;

4 “(D) the most recent information available
5 for the Residential Survey published by the
6 Census Bureau, and such other reliable data as
7 may be available regarding multifamily mort-
8 gages;

9 “(E) the ability of the enterprise to lead
10 the industry in expanding mortgage credit
11 availability at favorable terms, especially for un-
12 derserved markets, such as for—

13 “(i) small multifamily projects;

14 “(ii) multifamily properties in need of
15 preservation and rehabilitation; and

16 “(iii) multifamily properties located in
17 rural areas; and

18 “(F) the need to maintain the sound finan-
19 cial condition of the enterprise.

20 “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-
21 CY BONDS.—The Director may give credit toward the
22 achievement of the multifamily special affordable housing
23 goal under this section (for purposes of section 1336) to
24 dwelling units in multifamily housing projects that other-
25 wise qualify under such goal and that are financed by tax-

1 exempt or taxable bonds issued by a State or local housing
2 finance agency, but only if such bonds—

3 “(1) are secured by a guarantee of the enter-
4 prise; or

5 “(2) are not investment grade and are pur-
6 chased by the enterprise.

7 “(c) USE OF TENANT RENT LEVEL.—

8 “(1) IN GENERAL.—The Director shall monitor
9 the performance of each enterprise in meeting the
10 goal established under this section and shall evaluate
11 such performance (for purposes of section 1336)
12 based on whether the rent levels are affordable to
13 low-income and very low-income families.

14 “(2) RENT LEVEL.—A rent level shall be con-
15 sidered to be affordable for purposes of this sub-
16 section for an income category referred to in this
17 subsection if it does not exceed 30 percent of the
18 maximum income level of such income category, with
19 appropriate adjustments for unit size as measured
20 by the number of bedrooms.

21 “(d) DETERMINATION OF COMPLIANCE.—

22 “(1) IN GENERAL.—The Director shall, for
23 each year that the housing goal under this section
24 is in effect pursuant to section 1331(a), determine
25 whether each enterprise has complied with such goal

1 and the additional requirements under subsection
2 (a)(2).

3 “(2) COMPLIANCE.—An enterprise shall be con-
4 sidered to be in compliance with the goal described
5 under subsection (a) for a year only if the multi-
6 family mortgage purchases of the enterprise meet or
7 exceed the goal for the year established under sub-
8 section (a).

9 “(e) CONSIDERATION OF UNITS IN SINGLE-FAMILY
10 RENTAL HOUSING.—In establishing the goal under this
11 section, the Director may take into consideration the num-
12 ber of housing units financed by any mortgage purchased
13 by an enterprise on single-family rental housing that is
14 not owner-occupied.

15 “(f) REMOVING CREDIT.—The Director shall sub-
16 tract from the units or mortgages counted toward the goal
17 established under this section in a current year any units
18 or mortgages credited toward such goal in a prior year
19 if an enterprise requires a lender to repurchase, or reim-
20 burse for losses, or indemnify the enterprise against poten-
21 tial losses on such units or mortgages.

22 “(g) NOTICE OF DETERMINATION AND ENTERPRISE
23 COMMENT.—

24 “(1) NOTICE.—Within 30 days of making a de-
25 termination under subsection (d) regarding compli-

1 ance of an enterprise for a year with the housing
2 goal established under this section and before any
3 public disclosure thereof, the Director shall provide
4 notice of the determination to the enterprise, which
5 shall include an analysis and comparison, by the Di-
6 rector, of the performance of the enterprise for the
7 year and the goal for the year under subsection (a).

8 “(2) COMMENT PERIOD.—The Director shall
9 provide each enterprise and the public an oppor-
10 tunity to comment on the determination during the
11 30-day period beginning upon receipt by the enter-
12 prise of the notice.”.

13 (c) CONFORMING AMENDMENTS.—The Federal
14 Housing Enterprises Financial Safety and Soundness Act
15 of 1992 is amended—

16 (1) in section 1335(a) (12 U.S.C. 4565(a)), in
17 the matter preceding paragraph (1), by striking
18 “low- and moderate-income housing goal” and all
19 that follows through “section 1334” and inserting
20 “housing goals established under this subpart”; and

21 (2) in section 1336(a)(1) (12 U.S.C.
22 4566(a)(1)), by striking “sections 1332, 1333, and
23 1334,” and inserting “this subpart”.

1 (d) DEFINITIONS.—Section 1303 of the Federal
2 Housing Enterprises Financial Safety and Soundness Act
3 of 1992 (12 U.S.C. 4502) is amended—

4 (1) by striking paragraph (24), as so designated
5 by section 2 of this Act, and inserting the following:

6 “(24) VERY LOW-INCOME.—The term ‘very low-
7 income’ means—

8 “(A) in the case of owner-occupied units,
9 families having incomes not greater than 50
10 percent of the area median income; and

11 “(B) in the case of rental units, families
12 having incomes not greater than 50 percent of
13 the area median income, with adjustments for
14 smaller and larger families, as determined by
15 the Director.”; and

16 (2) by adding at the end the following:

17 “(26) CONFORMING MORTGAGE.—The term
18 ‘conforming mortgage’ means, with respect to an en-
19 terprise, a conventional mortgage having an original
20 principal obligation that does not exceed the applica-
21 ble dollar limitation, in effect at the time of such
22 origination, under—

23 “(A) section 302(b)(2) of the Federal Na-
24 tional Mortgage Association Charter Act; or

1 “(B) section 305(a)(2) of the Federal
2 Home Loan Mortgage Corporation Act.

3 “(27) EXTREMELY LOW-INCOME.—The term
4 ‘extremely low-income’ means—

5 “(A) in the case of owner-occupied units,
6 income not in excess of 30 percent of the area
7 median income; and

8 “(B) in the case of rental units, income
9 not in excess of 30 percent of the area median
10 income, with adjustments for smaller and larger
11 families, as determined by the Director.

12 “(28) LOW-INCOME AREA.—The term ‘low-in-
13 come area’ means a census tract or block numbering
14 area in which the median income does not exceed 80
15 percent of the median income for the area in which
16 such census tract or block numbering area is lo-
17 cated, and, for the purposes of section 1332(a)(2),
18 shall include families having incomes not greater
19 than 100 percent of the area median income who re-
20 side in minority census tracts.

21 “(29) MINORITY CENSUS TRACT.—The term
22 ‘minority census tract’ means a census tract that
23 has a minority population of at least 30 percent and
24 a median family income of less than 100 percent of
25 the area family median income.

1 “(30) SHORTAGE OF STANDARD RENTAL UNITS
2 BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY
3 LOW-INCOME RENTER HOUSEHOLDS.—

4 “(A) IN GENERAL.—The term ‘shortage of
5 standard rental units both affordable and avail-
6 able to extremely low-income renter households’
7 means the gap between—

8 “(i) the number of units with com-
9 plete plumbing and kitchen facilities with a
10 rent that is 30 percent or less of 30 per-
11 cent of the adjusted area median income as
12 determined by the Director that are occu-
13 pied by extremely low-income renter house-
14 holds or are vacant for rent; and

15 “(ii) the number of extremely low-in-
16 come renter households.

17 “(B) RULE OF CONSTRUCTION.—If the
18 number of units described in subparagraph
19 (A)(i) exceeds the number of extremely low-in-
20 come households as described in subparagraph
21 (A)(ii), there is no shortage.

22 “(31) SHORTAGE OF STANDARD RENTAL UNITS
23 BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-
24 INCOME RENTER HOUSEHOLDS.—

1 “(A) IN GENERAL.—The term ‘shortage of
 2 standard rental units both affordable and avail-
 3 able to very low-income renter households’
 4 means the gap between—

5 “(i) the number of units with com-
 6 plete plumbing and kitchen facilities with a
 7 rent that is 30 percent or less of 50 per-
 8 cent of the adjusted area median income as
 9 determined by the Director that are occu-
 10 pied by either extremely low- or very low-
 11 income renter households or are vacant for
 12 rent; and

13 “(ii) the number of extremely low-
 14 and very low-income renter households.

15 “(B) RULE OF CONSTRUCTION.—If the
 16 number of units described in subparagraph
 17 (A)(i) exceeds the number of extremely low- and
 18 very low-income households as described in sub-
 19 paragraph (A)(ii), there is no shortage.”.

20 **SEC. 129. DUTY TO SERVE UNDERSERVED MARKETS.**

21 (a) ESTABLISHMENT AND EVALUATION OF PER-
 22 FORMANCE.—Section 1335 of the Federal Housing Enter-
 23 prises Financial Safety and Soundness Act of 1992 (12
 24 U.S.C. 4565) is amended—

(1) in the section heading, by inserting “**DUTY TO SERVE UNDERSERVED MARKETS AND**” before “**OTHER**”;

(2) by striking subsection (b);

(3) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “and to carry out the duty under subsection (a) of this section” before “, each enterprise shall”;

(B) in paragraph (3), by inserting “and” after the semicolon at the end;

(C) in paragraph (4), by striking “; and” and inserting a period;

(D) by striking paragraph (5); and

(E) by redesignating such subsection as subsection (b);

(4) by inserting before subsection (b) (as so redesignated by paragraph (3)(E) of this subsection) the following new subsection:

“(a) **DUTY TO SERVE UNDERSERVED MARKETS.—**

“(1) **DUTY.—**In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C.

1 1451 note) to undertake activities relating to mort-
2 gages on housing for very low-, low-, and moderate-
3 income families involving a reasonable economic re-
4 turn that may be less than the return earned on
5 other activities, each enterprise shall have the duty
6 to increase the liquidity of mortgage investments
7 and improve the distribution of investment capital
8 available for mortgage financing for underserved
9 markets by purchasing or securitizing mortgage in-
10 vestments.

11 “(2) UNDERSERVED MARKETS.—To meet its
12 duty under paragraph (1), each enterprise shall com-
13 ply with the following requirements with respect to
14 the following underserved markets:

15 “(A) MANUFACTURED HOUSING.—The en-
16 terprise shall lead the industry in developing
17 loan products and flexible underwriting guide-
18 lines to facilitate a secondary market for mort-
19 gages on manufactured homes for very low-,
20 low-, and moderate-income families.

21 “(B) AFFORDABLE HOUSING PRESERVA-
22 TION.—The enterprise shall lead the industry in
23 developing loan products and flexible under-
24 writing guidelines to facilitate a secondary mar-
25 ket to preserve housing affordable to very

1 low-, low-, and moderate-income families, in-
2 cluding housing projects subsidized under—

3 “(i) the project-based and tenant-
4 based rental assistance programs under
5 section 8 of the United States Housing Act
6 of 1937;

7 “(ii) the program under section 236
8 of the National Housing Act;

9 “(iii) the below-market interest rate
10 mortgage program under section 221(d)(4)
11 of the National Housing Act;

12 “(iv) the supportive housing for the
13 elderly program under section 202 of the
14 Housing Act of 1959;

15 “(v) the supportive housing program
16 for persons with disabilities under section
17 811 of the Cranston-Gonzalez National Af-
18 fordable Housing Act;

19 “(vi) the programs under title IV of
20 the McKinney-Vento Homeless Assistance
21 Act (42 U.S.C. 11361 et seq.), but only
22 permanent supportive housing projects
23 subsidized under such programs; and

1 “(vii) the rural rental housing pro-
2 gram under section 515 of the Housing
3 Act of 1949.

4 “(C) RURAL AND OTHER UNDERSERVED
5 MARKETS.—The enterprise shall lead the indus-
6 try in developing loan products and flexible un-
7 derwriting guidelines to facilitate a secondary
8 market for mortgages on housing for very
9 low-, low-, and moderate-income families in
10 rural areas, and for mortgages for housing for
11 any other underserved market for very low-,
12 low-, and moderate-income families that the Di-
13 rector identifies as lacking adequate credit
14 through conventional lending sources. Such un-
15 derserved markets may be identified by bor-
16 rower type, market segment, or geographic
17 area.”; and

18 (5) by adding at the end the following new sub-
19 section:

20 “(c) EVALUATION AND REPORTING OF COMPLI-
21 ANCE.—

22 “(1) IN GENERAL.—Not later than 6 months
23 after the effective date of the Federal Housing Fi-
24 nance Regulatory Reform Act of 2008, the Director
25 shall establish a manner for evaluating whether, and

1 the extent to which, the enterprises have complied
2 with the duty under subsection (a) to serve under-
3 served markets and for rating the extent of such
4 compliance. Using such method, the Director shall,
5 for each year, evaluate such compliance and rate the
6 performance of each enterprise as to extent of com-
7 pliance. The Director shall include such evaluation
8 and rating for each enterprise for a year in the re-
9 port for that year submitted pursuant to section
10 1319B(a).

11 “(2) SEPARATE EVALUATIONS.—In determining
12 whether an enterprise has complied with the duty re-
13 ferred to in paragraph (1), the Director shall sepa-
14 rately evaluate whether the enterprise has complied
15 with such duty with respect to each of the under-
16 served markets identified in subsection (a), taking
17 into consideration—

18 “(A) the development of loan products and
19 more flexible underwriting guidelines;

20 “(B) the extent of outreach to qualified
21 loan sellers in each of such underserved mar-
22 kets; and

23 “(C) the volume of loans purchased in each
24 of such underserved markets.

1 “(3) MANUFACTURED HOUSING MARKET.—In
2 determining whether an enterprise has complied with
3 the duty under subparagraph (A) of subsection
4 (a)(2), the Director may consider loans secured by
5 both real and personal property.”.

6 (b) ENFORCEMENT.—Subsection (a) of section 1336
7 of the Housing and Community Development Act of 1992
8 (12 U.S.C. 4566(a)) is amended—

9 (1) in paragraph (1), by inserting “and with
10 the duty under section 1335(a) of each enterprise
11 with respect to underserved markets,” before “as
12 provided in this section”; and

13 (2) by adding at the end of such subsection, as
14 amended by the preceding provisions of this subtitle,
15 the following new paragraph:

16 “(4) ENFORCEMENT OF DUTY TO PROVIDE
17 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—
18 The duty under section 1335(a) of each enterprise
19 to serve underserved markets (as determined in ac-
20 cordance with section 1335(c)) shall be enforceable
21 under this section to the same extent and under the
22 same provisions that the housing goals established
23 under this subpart are enforceable. Such duty shall
24 not be enforceable under any other provision of this
25 title (including subpart C of this part) other than

1 this section or under any provision of the Federal
2 National Mortgage Association Charter Act or the
3 Federal Home Loan Mortgage Corporation Act.”.

4 **SEC. 130. MONITORING AND ENFORCING COMPLIANCE**
5 **WITH HOUSING GOALS.**

6 (a) IN GENERAL.—Section 1336 of the Federal
7 Housing Enterprises Financial Safety and Soundness Act
8 of 1992 (12 U.S.C. 4566) is amended by striking sub-
9 sections (b) and (c) and inserting the following:

10 “(b) NOTICE AND PRELIMINARY DETERMINATION OF
11 FAILURE TO MEET GOALS.—

12 “(1) NOTICE.—If the Director preliminarily de-
13 termines that an enterprise has failed, or that there
14 is a substantial probability that an enterprise will
15 fail, to meet any housing goal under this subpart,
16 the Director shall provide written notice to the en-
17 terprise of such a preliminary determination, the
18 reasons for such determination, and the information
19 on which the Director based the determination.

20 “(2) RESPONSE PERIOD.—

21 “(A) IN GENERAL.—During the 30-day pe-
22 riod beginning on the date on which an enter-
23 prise is provided notice under paragraph (1),
24 the enterprise may submit to the Director any
25 written information that the enterprise con-

1 siders appropriate for consideration by the Di-
2 rector in finally determining whether such fail-
3 ure has occurred or whether the achievement of
4 such goal was or is feasible.

5 “(B) EXTENDED PERIOD.—The Director
6 may extend the period under subparagraph (A)
7 for good cause for not more than 30 additional
8 days.

9 “(C) SHORTENED PERIOD.—The Director
10 may shorten the period under subparagraph (A)
11 for good cause.

12 “(D) FAILURE TO RESPOND.—The failure
13 of an enterprise to provide information during
14 the 30-day period under this paragraph (as ex-
15 tended or shortened) shall waive any right of
16 the enterprise to comment on the proposed de-
17 termination or action of the Director.

18 “(3) CONSIDERATION OF INFORMATION AND
19 FINAL DETERMINATION.—

20 “(A) IN GENERAL.—After the expiration of
21 the response period under paragraph (2), or
22 upon receipt of information provided during
23 such period by the enterprise, whichever occurs
24 earlier, the Director shall issue a final deter-
25 mination on—

1 “(i) whether the enterprise has failed,
2 or there is a substantial probability that
3 the enterprise will fail, to meet the housing
4 goal; and

5 “(ii) whether (taking into consider-
6 ation market and economic conditions and
7 the financial condition of the enterprise)
8 the achievement of the housing goal was or
9 is feasible.

10 “(B) CONSIDERATIONS.—In making a
11 final determination under subparagraph (A),
12 the Director shall take into consideration any
13 relevant information submitted by the enter-
14 prise during the response period.

15 “(C) NOTICE.—The Director shall provide
16 written notice, including a response to any in-
17 formation submitted during the response pe-
18 riod, to the enterprise, the Committee on Bank-
19 ing, Housing, and Urban Affairs of the Senate,
20 and the Committee on Financial Services of the
21 House of Representatives, of—

22 “(i) each final determination under
23 this paragraph that an enterprise has
24 failed, or that there is a substantial prob-

1 ability that the enterprise will fail, to meet
2 a housing goal;

3 “(ii) each final determination that the
4 achievement of a housing goal was or is
5 feasible; and

6 “(iii) the reasons for each such final
7 determination.

8 “(c) CEASE AND DESIST, CIVIL MONEY PENALTIES,
9 AND REMEDIES INCLUDING HOUSING PLANS.—

10 “(1) REQUIREMENT.—If the Director finds,
11 pursuant to subsection (b), that there is a substan-
12 tial probability that an enterprise will fail, or has ac-
13 tually failed, to meet any housing goal under this
14 subpart, and that the achievement of the housing
15 goal was or is feasible, the Director may require that
16 the enterprise submit a housing plan under this sub-
17 section. If the Director makes such a finding and
18 the enterprise refuses to submit such a plan, sub-
19 mits an unacceptable plan, fails to comply with the
20 plan, or the Director finds that the enterprise has
21 failed to meet any housing goal under this subpart,
22 in addition to requiring an enterprise to submit a
23 housing plan, the Director may issue a cease and de-
24 sist order in accordance with section 1341, impose
25 civil money penalties in accordance with section

1 1345, or order other remedies as set forth in para-
2 graph (7).

3 “(2) HOUSING PLAN.—If the Director requires
4 a housing plan under this subsection, such a plan
5 shall be—

6 “(A) a feasible plan describing the specific
7 actions the enterprise will take—

8 “(i) to achieve the goal for the next
9 calendar year; and

10 “(ii) if the Director determines that
11 there is a substantial probability that the
12 enterprise will fail to meet a goal in the
13 current year, to make such improvements
14 and changes in its operations as are rea-
15 sonable in the remainder of such year; and

16 “(B) sufficiently specific to enable the Di-
17 rector to monitor compliance periodically.

18 “(3) DEADLINE FOR SUBMISSION.—The Direc-
19 tor shall establish a deadline for an enterprise to
20 comply with any remedial action or submit a housing
21 plan to the Director, which may not be more than
22 45 days after the enterprise is provided notice. The
23 Director may extend the deadline to the extent that
24 the Director determines necessary. Any extension of

1 the deadline shall be in writing and for a time cer-
2 tain.

3 “(4) APPROVAL.—The Director shall review
4 each submission by an enterprise, including a hous-
5 ing plan submitted under this subsection, and, not
6 later than 30 days after submission, approve or dis-
7 approve the plan or other action. The Director may
8 extend the period for approval or disapproval for a
9 single additional 30-day period if the Director deter-
10 mines it necessary. The Director shall approve any
11 plan that the Director determines is likely to suc-
12 ceed, and conforms with the Federal National Mort-
13 gage Association Charter Act or the Federal Home
14 Loan Mortgage Corporation Act (as applicable), this
15 title, and any other applicable provision of law.

16 “(5) NOTICE OF APPROVAL AND DIS-
17 APPROVAL.—The Director shall provide written no-
18 tice to any enterprise submitting a housing plan of
19 the approval or disapproval of the plan (which shall
20 include the reasons for any disapproval of the plan)
21 and of any extension of the period for approval or
22 disapproval.

23 “(6) RESUBMISSION.—If the initial housing
24 plan submitted by an enterprise under this section
25 is disapproved, the enterprise shall submit an

1 amended plan acceptable to the Director not later
 2 than 15 days after such disapproval, or such longer
 3 period that the Director determines is in the public
 4 interest.

5 “(7) ADDITIONAL REMEDIES FOR FAILURE TO
 6 MEET GOALS.—In addition to ordering a housing
 7 plan under this section, issuing cease and desist or-
 8 ders under section 1341, and ordering civil money
 9 penalties under section 1345, the Director may—

10 “(A) seek other actions when an enterprise
 11 fails to meet a goal; and

12 “(B) exercise appropriate enforcement au-
 13 thority available to the Director under this
 14 Act.”.

15 (b) CONFORMING AMENDMENT.—The heading for
 16 subpart C of part 2 of subtitle A of the Federal Housing
 17 Enterprises Financial Safety and Soundness Act of 1992
 18 is amended to read as follows:

19 **“Subpart C—Enforcement”.**

20 (c) CEASE AND DESIST PROCEEDINGS .—

21 (1) REPEAL.—Section 1341 of the Federal
 22 Housing Enterprises Financial Safety and Sound-
 23 ness Act of 1992 (12 U.S.C. 4581) is hereby re-
 24 pealed.

1 (2) CEASE AND DESIST PROCEEDINGS.—The
2 Federal Housing Enterprises Financial Safety and
3 Soundness Act of 1992 is amended by inserting be-
4 fore section 1342 the following:

5 **“SEC. 1341. CEASE AND DESIST PROCEEDINGS.**

6 “(a) GROUNDS FOR ISSUANCE.—The Director may
7 issue and serve a notice of charges under this section upon
8 an enterprise if the Director determines that—

9 “(1) the enterprise has failed to meet any hous-
10 ing goal established under subpart B, following a
11 written notice and determination of such failure in
12 accordance with section 1336;

13 “(2) the enterprise has failed to submit a report
14 under section 1327, following a notice of such fail-
15 ure, an opportunity for comment by the enterprise,
16 and a final determination by the Director;

17 “(3) the enterprise has failed to submit the in-
18 formation required under subsection (m) or (n) of
19 section 309 of the Federal National Mortgage Asso-
20 ciation Charter Act, or subsection (e) or (f) of sec-
21 tion 307 of the Federal Home Loan Mortgage Cor-
22 poration Act;

23 “(4) the enterprise has violated any provision of
24 part 2 of this title or any order, rule, or regulation
25 under part 2;

1 “(5) the enterprise has failed to submit a hous-
2 ing plan or perform its responsibilities under a reme-
3 dial order that substantially complies with section
4 1336(c) within the applicable period; or

5 “(6) the enterprise has failed to comply with a
6 housing plan under section 1336(c).

7 “(b) PROCEDURE.—

8 “(1) NOTICE OF CHARGES.—Each notice of
9 charges issued under this section shall contain a
10 statement of the facts constituting the alleged con-
11 duct and shall fix a time and place at which a hear-
12 ing will be held to determine on the record whether
13 an order to cease and desist from such conduct
14 should issue.

15 “(2) ISSUANCE OF ORDER.—If the Director
16 finds on the record made at a hearing described in
17 paragraph (1) that any conduct specified in the no-
18 tice of charges has been established (or the enter-
19 prise consents pursuant to section 1342(a)(4)), the
20 Director may issue and serve upon the enterprise an
21 order requiring the enterprise to—

22 “(A) comply with the goals;

23 “(B) submit a report under section 1327;

1 “(C) comply with any provision of part 2
2 of this title or any order, rule, or regulation
3 under part 2;

4 “(D) submit a housing plan in compliance
5 with section 1336(c);

6 “(E) comply with the housing plan in com-
7 pliance with section 1336(c); or

8 “(F) provide the information required
9 under subsection (m) or (n) of section 309 of
10 the Federal National Mortgage Association
11 Charter Act, or subsection (e) or (f) of section
12 307 of the Federal Home Loan Mortgage Cor-
13 poration Act.

14 “(c) EFFECTIVE DATE.—An order under this section
15 shall become effective upon the expiration of the 30-day
16 period beginning on the date of service of the order upon
17 the enterprise (except in the case of an order issued upon
18 consent, which shall become effective at the time specified
19 therein), and shall remain effective and enforceable as pro-
20 vided in the order, except to the extent that the order is
21 stayed, modified, terminated, or set aside by action of the
22 Director or otherwise, as provided in this subpart.”.

23 (d) CIVIL MONEY PENALTIES.—

24 (1) REPEAL.—Section 1345 of the Federal
25 Housing Enterprises Financial Safety and Sound-

1 ness Act of 1992 (12 U.S.C. 4585) is hereby re-
2 pealed.

3 (2) CIVIL MONEY PENALTIES.—The Federal
4 Housing Enterprises Financial Safety and Sound-
5 ness Act of 1992 is amended by inserting after sec-
6 tion 1344 the following:

7 **“SEC. 1345. CIVIL MONEY PENALTIES.**

8 “(a) AUTHORITY.—The Director may impose a civil
9 money penalty, in accordance with the provisions of this
10 section, on any enterprise that has failed to—

11 “(1) meet any housing goal established under
12 subpart B, following a written notice and determina-
13 tion of such failure in accordance with section
14 1336(b);

15 “(2) submit a report under section 1327, fol-
16 lowing a notice of such failure, an opportunity for
17 comment by the enterprise, and a final determina-
18 tion by the Director;

19 “(3) submit the information required under
20 subsection (m) or (n) of section 309 of the Federal
21 National Mortgage Association Charter Act or sub-
22 section (e) or (f) of section 307 of the Federal Home
23 Loan Mortgage Corporation Act;

24 “(4) comply with any provision of part 2 of this
25 title or any order, rule, or regulation under part 2;

1 “(5) submit a housing plan or perform its re-
2 sponsibilities under a remedial order issued pursuant
3 to section 1336(c) within the required period; or

4 “(6) comply with a housing plan for the enter-
5 prise under section 1336(c).

6 “(b) AMOUNT OF PENALTY.—The amount of a pen-
7 alty under this section, as determined by the Director,
8 may not exceed—

9 “(1) for any failure described in paragraph (1),
10 (5), or (6) of subsection (a), \$100,000 for each day
11 that the failure occurs; and

12 “(2) for any failure described in paragraph (2),
13 (3), or (4) of subsection (a), \$50,000 for each day
14 that the failure occurs.

15 “(c) PROCEDURES.—

16 “(1) ESTABLISHMENT.—The Director shall es-
17 tablish standards and procedures governing the im-
18 position of civil money penalties under this section.
19 Such standards and procedures—

20 “(A) shall provide for the Director to no-
21 tify the enterprise in writing of the determina-
22 tion of the Director to impose the penalty,
23 which shall be made on the record;

24 “(B) shall provide for the imposition of a
25 penalty only after the enterprise has been given

1 an opportunity for a hearing on the record pur-
2 suant to section 1342; and

3 “(C) may provide for review by the Direc-
4 tor of any determination or order, or interlocu-
5 tory ruling, arising from a hearing.

6 “(2) FACTORS IN DETERMINING AMOUNT OF
7 PENALTY.—In determining the amount of a penalty
8 under this section, the Director shall give consider-
9 ation to factors including—

10 “(A) the gravity of the offense;

11 “(B) any history of prior offenses;

12 “(C) ability to pay the penalty;

13 “(D) injury to the public;

14 “(E) benefits received;

15 “(F) deterrence of future violations;

16 “(G) the length of time that the enterprise
17 should reasonably take to achieve the goal; and

18 “(H) such other factors as the Director
19 may determine, by regulation, to be appro-
20 priate.

21 “(d) ACTION TO COLLECT PENALTY.—If an enter-
22 prise fails to comply with an order by the Director impos-
23 ing a civil money penalty under this section, after the
24 order is no longer subject to review, as provided in sections
25 1342 and 1343, the Director may bring an action in the

1 United States District Court for the District of Columbia
 2 to obtain a monetary judgment against the enterprise, and
 3 such other relief as may be available. The monetary judg-
 4 ment may, in the court’s discretion, include the attorneys’
 5 fees and other expenses incurred by the United States in
 6 connection with the action. In an action under this sub-
 7 section, the validity and appropriateness of the order im-
 8 posing the penalty shall not be subject to review.

9 “(e) SETTLEMENT BY DIRECTOR.—The Director
 10 may compromise, modify, or remit any civil money penalty
 11 which may be, or has been, imposed under this section.”.

12 (e) DIRECTOR AUTHORITY.—

13 (1) AUTHORITY TO BRING A CIVIL ACTION.—

14 Section 1344(a) of the Federal Housing Enterprises
 15 Financial Safety and Soundness Act of 1992 (12
 16 U.S.C. 4584) is amended by striking “The Secretary
 17 may request the Attorney General of the United
 18 States to bring a civil action” and inserting “The
 19 Director may bring a civil action”.

20 (2) SUBPOENA ENFORCEMENT.—Section
 21 1348(c) of the Federal Housing Enterprises Finan-
 22 cial Safety and Soundness Act of 1992 (12 U.S.C.
 23 4588(c)) is amended by inserting “may bring an ac-
 24 tion or” before “may request”.

1 (3) CONFORMING AMENDMENTS.—Subpart C of
 2 part 2 of subtitle A of the Federal Housing Enter-
 3 prises Financial Safety and Soundness Act of 1992
 4 (12 U.S.C. 4581 et seq.) is amended by striking
 5 “Secretary” each place that term appears and in-
 6 serting “Director” in each of—

7 (A) section 1342 (12 U.S.C. 4582);

8 (B) section 1343 (12 U.S.C. 4583);

9 (C) section 1346 (12 U.S.C. 4586);

10 (D) section 1347 (12 U.S.C. 4587); and

11 (E) section 1348 (12 U.S.C. 4588).

12 **SEC. 131. TRANSFER AND RIGHTS OF CERTAIN HUD EM-**
 13 **PLOYEES.**

14 (a) TRANSFER.—Each employee of the Department
 15 of Housing and Urban Development whose position re-
 16 sponsibilities primarily involve the establishment and en-
 17 forcement of the housing goals under subpart B of part
 18 2 of subtitle A of the Federal Housing Enterprises Finan-
 19 cial Safety and Soundness Act of 1992 (12 U.S.C. 4561
 20 et seq.) shall be transferred to the Federal Housing Fi-
 21 nance Agency for employment, not later than the effective
 22 date of the Federal Housing Finance Regulatory Reform
 23 Act of 2008, and such transfer shall be deemed a transfer
 24 of function for purposes of section 3503 of title 5, United
 25 States Code.

1 (b) GUARANTEED POSITIONS.—

2 (1) IN GENERAL.—Each employee transferred
3 under subsection (a) shall be guaranteed a position
4 with the same status, tenure, grade, and pay as that
5 held on the day immediately preceding the transfer.

6 (2) NO INVOLUNTARY SEPARATION OR REDUC-
7 TION.—An employee transferred under subsection
8 (a) holding a permanent position on the day imme-
9 diately preceding the transfer may not be involun-
10 tarily separated or reduced in grade or compensation
11 during the 12-month period beginning on the date of
12 transfer, except for cause, or, in the case of a tem-
13 porary employee, separated in accordance with the
14 terms of the appointment of the employee.

15 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
16 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

17 (1) IN GENERAL.—In the case of an employee
18 occupying a position in the excepted service or the
19 Senior Executive Service, any appointment authority
20 established under law or by regulations of the Office
21 of Personnel Management for filling such position
22 shall be transferred, subject to paragraph (2).

23 (2) DECLINE OF TRANSFER.—The Director
24 may decline a transfer of authority under paragraph
25 (1) to the extent that such authority relates to—

1 (A) a position excepted from the competi-
2 tive service because of its confidential, policy-
3 making, policy-determining, or policy-advocating
4 character; or

5 (B) a noncareer position in the Senior Ex-
6 ecutive Service (within the meaning of section
7 3132(a)(7) of title 5, United States Code).

8 (d) REORGANIZATION.—If the Director determines,
9 after the end of the 1-year period beginning on the effec-
10 tive date of the Federal Housing Finance Regulatory Re-
11 form Act of 2008, that a reorganization of the combined
12 workforce is required, that reorganization shall be deemed
13 a major reorganization for purposes of affording affected
14 employee retirement under section 8336(d)(2) or
15 8414(b)(1)(B) of title 5, United States Code.

16 (e) EMPLOYEE BENEFIT PROGRAMS.—

17 (1) IN GENERAL.—Any employee described
18 under subsection (a) accepting employment with the
19 Agency as a result of a transfer under subsection (a)
20 may retain, for 12 months after the date on which
21 such transfer occurs, membership in any employee
22 benefit program of the Agency or the Department of
23 Housing and Urban Development, as applicable, in-
24 cluding insurance, to which such employee belongs
25 on such effective date, if—

1 (A) the employee does not elect to give up
2 the benefit or membership in the program; and

3 (B) the benefit or program is continued by
4 the Director of the Federal Housing Finance
5 Agency.

6 (2) COST DIFFERENTIAL.—

7 (A) IN GENERAL.—The difference in the
8 costs between the benefits which would have
9 been provided by the Department of Housing
10 and Urban Development and those provided by
11 this section shall be paid by the Director.

12 (B) HEALTH INSURANCE.—If any em-
13 ployee elects to give up membership in a health
14 insurance program or the health insurance pro-
15 gram is not continued by the Director, the em-
16 ployee shall be permitted to select an alternate
17 Federal health insurance program not later
18 than 30 days after the date of such election or
19 notice, without regard to any other regularly
20 scheduled open season.

**Subtitle C—Prompt Corrective
Action**

SEC. 141. CRITICAL CAPITAL LEVELS.

(a) IN GENERAL.—Section 1363 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4613) is amended—

(1) by striking “For” and inserting “(a) ENTERPRISES.—FOR”; and

(2) by adding at the end the following new subsection:

“(b) FEDERAL HOME LOAN BANKS.—

“(1) IN GENERAL.—For purposes of this subtitle, the critical capital level for each Federal Home Loan Bank shall be such amount of capital as the Director shall, by regulation, require.

“(2) CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.—In establishing the critical capital level under paragraph (1) for the Federal Home Loan Banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.”.

1 (b) REGULATIONS.—Not later than the expiration of
 2 the 180-day period beginning on the date of enactment
 3 of this Act, the Director of the Federal Housing Finance
 4 Agency shall issue regulations pursuant to section 1363(b)
 5 of the Federal Housing Enterprises Financial Safety and
 6 Soundness Act of 1992 (as added by this section) estab-
 7 lishing the critical capital level under such section.

8 **SEC. 142. CAPITAL CLASSIFICATIONS.**

9 (a) IN GENERAL.—Section 1364 of the Federal
 10 Housing Enterprises Financial Safety and Soundness Act
 11 of 1992 (12 U.S.C. 4614) is amended—

12 (1) in the heading for subsection (a) by striking
 13 “In General” and inserting “Enterprises”;

14 (2) in subsection (c)—

15 (A) by striking “subsection (b)” and in-
 16 serting “subsection (c)”;

17 (B) by striking “enterprises” and inserting
 18 “regulated entities”; and

19 (C) by striking the last sentence;

20 (3) by redesignating subsections (c) (as so
 21 amended by paragraph (2) of this subsection) and
 22 (d) as subsections (d) and (f), respectively;

23 (4) by striking subsection (b) and inserting the
 24 following:

25 “(b) FEDERAL HOME LOAN BANKS.—

1 “(1) ESTABLISHMENT AND CRITERIA.—For
2 purposes of this subtitle, the Director shall, by regu-
3 lation—

4 “(A) establish the capital classifications
5 specified under paragraph (2) for the Federal
6 Home Loan Banks;

7 “(B) establish criteria for each such cap-
8 ital classification based on the amount and
9 types of capital held by a bank and the risk-
10 based, minimum, and critical capital levels for
11 the banks and taking due consideration of the
12 capital classifications established under sub-
13 section (a) for the enterprises, with such modi-
14 fications as the Director determines to be ap-
15 propriate to reflect the difference in operations
16 between the banks and the enterprises; and

17 “(C) shall classify the Federal Home Loan
18 Banks according to such capital classifications.

19 “(2) CLASSIFICATIONS.—The capital classifica-
20 tions specified under this paragraph are—

21 “(A) adequately capitalized;

22 “(B) undercapitalized;

23 “(C) significantly undercapitalized; and

24 “(D) critically undercapitalized.

25 “(c) DISCRETIONARY CLASSIFICATION.—

1 “(1) GROUNDS FOR RECLASSIFICATION.—The
2 Director may reclassify a regulated entity under
3 paragraph (2) if—

4 “(A) at any time, the Director determines
5 in writing that the regulated entity is engaging
6 in conduct that could result in a rapid depletion
7 of core or total capital or the value of collateral
8 pledged as security has decreased significantly
9 or that the value of the property subject to any
10 mortgage held by the regulated entity (or
11 securitized in the case of an enterprise) has de-
12 creased significantly;

13 “(B) after notice and an opportunity for
14 hearing, the Director determines that the regu-
15 lated entity is in an unsafe or unsound condi-
16 tion; or

17 “(C) pursuant to section 1371(b), the Di-
18 rector deems the regulated entity to be engag-
19 ing in an unsafe or unsound practice.

20 “(2) RECLASSIFICATION.—In addition to any
21 other action authorized under this title, including
22 the reclassification of a regulated entity for any rea-
23 son not specified in this subsection, if the Director
24 takes any action described in paragraph (1), the Di-
25 rector may classify a regulated entity—

1 “(A) as undercapitalized, if the regulated
2 entity is otherwise classified as adequately cap-
3 italized;

4 “(B) as significantly undercapitalized, if
5 the regulated entity is otherwise classified as
6 undercapitalized; and

7 “(C) as critically undercapitalized, if the
8 regulated entity is otherwise classified as sig-
9 nificantly undercapitalized.”; and

10 (5) by inserting after subsection (d) (as so re-
11 designated by paragraph (3) of this subsection), the
12 following new subsection:

13 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

14 “(1) IN GENERAL.—A regulated entity shall
15 make no capital distribution if, after making the dis-
16 tribution, the regulated entity would be under-
17 capitalized.

18 “(2) EXCEPTION.—Notwithstanding paragraph
19 (1), the Director may permit a regulated entity, to
20 the extent appropriate or applicable, to repurchase,
21 redeem, retire, or otherwise acquire shares or owner-
22 ship interests if the repurchase, redemption, retire-
23 ment, or other acquisition—

24 “(A) is made in connection with the
25 issuance of additional shares or obligations of

1 the regulated entity in at least an equivalent
 2 amount; and

3 “(B) will reduce the financial obligations of
 4 the regulated entity or otherwise improve the fi-
 5 nancial condition of the entity.”.

6 (b) REGULATIONS.—Not later than the expiration of
 7 the 180-day period beginning on the date of enactment
 8 of this Act, the Director of the Federal Housing Finance
 9 Agency shall issue regulations to carry out section 1364(b)
 10 of the Federal Housing Enterprises Financial Safety and
 11 Soundness Act of 1992 (as added by this section), relating
 12 to capital classifications for the Federal Home Loan
 13 Banks.

14 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
 15 **CAPITALIZED REGULATED ENTITIES.**

16 Section 1365 of the Federal Housing Enterprises Fi-
 17 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 18 4615) is amended—

19 (1) by striking “the enterprise” each place that
 20 term appears and inserting “the regulated entity”;

21 (2) by striking “An enterprise” each place that
 22 term appears and inserting “A regulated entity”;

23 (3) by striking “an enterprise” each place that
 24 term appears and inserting “a regulated entity”;

25 (4) in subsection (a)—

1 (A) by redesignating paragraphs (1) and
2 (2) as paragraphs (2) and (3), respectively;

3 (B) by inserting before paragraph (2), as
4 redesignated, the following:

5 “(1) REQUIRED MONITORING.—The Director
6 shall—

7 “(A) closely monitor the condition of any
8 undercapitalized regulated entity;

9 “(B) closely monitor compliance with the
10 capital restoration plan, restrictions, and re-
11 quirements imposed on an undercapitalized reg-
12 ulated entity under this section; and

13 “(C) periodically review the plan, restric-
14 tions, and requirements applicable to an under-
15 capitalized regulated entity to determine wheth-
16 er the plan, restrictions, and requirements are
17 achieving the purpose of this section.”; and

18 (C) by adding at the end the following:

19 “(4) RESTRICTION OF ASSET GROWTH.—An
20 undercapitalized regulated entity shall not permit its
21 average total assets during any calendar quarter to
22 exceed its average total assets during the preceding
23 calendar quarter, unless—

24 “(A) the Director has accepted the capital
25 restoration plan of the regulated entity;

1 “(B) any increase in total assets is con-
2 sistent with the capital restoration plan; and

3 “(C) the ratio of tangible equity to assets
4 of the regulated entity increases during the cal-
5 endar quarter at a rate sufficient to enable the
6 regulated entity to become adequately capital-
7 ized within a reasonable time.

8 “(5) PRIOR APPROVAL OF ACQUISITIONS AND
9 NEW ACTIVITIES.—An undercapitalized regulated en-
10 tity shall not, directly or indirectly, acquire any in-
11 terest in any entity or engage in any new activity,
12 unless—

13 “(A) the Director has accepted the capital
14 restoration plan of the regulated entity, the reg-
15 ulated entity is implementing the plan, and the
16 Director determines that the proposed action is
17 consistent with and will further the achievement
18 of the plan; or

19 “(B) the Director determines that the pro-
20 posed action will further the purpose of this
21 subtitle.”;

22 (5) in subsection (b)—

23 (A) in the subsection heading, by striking
24 “DISCRETIONARY”;

1 (B) in the matter preceding paragraph (1),
 2 by striking “may” and inserting “shall”; and

3 (C) in paragraph (2)—

4 (i) by striking “make, in good faith,
 5 reasonable efforts necessary to”; and

6 (ii) by striking the period at the end
 7 and inserting “in any material respect.”;

8 and

9 (6) by striking subsection (c) and inserting the
 10 following:

11 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
 12 Director may take, with respect to an undercapitalized
 13 regulated entity, any of the actions authorized to be taken
 14 under section 1366 with respect to a significantly under-
 15 capitalized regulated entity, if the Director determines
 16 that such actions are necessary to carry out the purpose
 17 of this subtitle.”.

18 **SEC. 144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
 19 **CANTLY UNDERCAPITALIZED REGULATED**
 20 **ENTITIES.**

21 Section 1366 of the Federal Housing Enterprises Fi-
 22 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 23 4616) is amended—

1 (1) in subsection (a)(2), by striking “under-
2 capitalized enterprise” and inserting “undercapital-
3 ized”;

4 (2) by striking “the enterprise” each place that
5 term appears and inserting “the regulated entity”;

6 (3) by striking “An enterprise” each place that
7 term appears and inserting “A regulated entity”;

8 (4) by striking “an enterprise” each place that
9 term appears and inserting “a regulated entity”;

10 (5) in subsection (b)—

11 (A) in the subsection heading, by striking
12 “DISCRETIONARY SUPERVISORY” and inserting
13 “SPECIFIC”;

14 (B) in the matter preceding paragraph (1),
15 by striking “may, at any time, take any” and
16 inserting “shall carry out this section by taking,
17 at any time, 1 or more”;

18 (C) by striking paragraph (6);

19 (D) by redesignating paragraph (5) as
20 paragraph (6);

21 (E) by inserting after paragraph (4) the
22 following:

23 “(5) IMPROVEMENT OF MANAGEMENT.—Take 1
24 or more of the following actions:

1 “(A) NEW ELECTION OF BOARD.—Order a
2 new election for the board of directors of the
3 regulated entity.

4 “(B) DISMISSAL OF DIRECTORS OR EXECU-
5 TIVE OFFICERS.—Require the regulated entity
6 to dismiss from office any director or executive
7 officer who had held office for more than 180
8 days immediately before the date on which the
9 regulated entity became undercapitalized. Dis-
10 missal under this subparagraph shall not be
11 construed to be a removal pursuant to the en-
12 forcement powers of the Director under section
13 1377.

14 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
15 FICERS.—Require the regulated entity to em-
16 ploy qualified executive officers (who, if the Di-
17 rector so specifies, shall be subject to approval
18 by the Director).”; and

19 (F) by adding at the end the following:

20 “(7) OTHER ACTION.—Require the regulated
21 entity to take any other action that the Director de-
22 termines will better carry out the purpose of this
23 section than any of the other actions specified in this
24 subsection.”; and

1 (6) by striking subsection (c) and inserting the
2 following:

3 “(c) RESTRICTION ON COMPENSATION OF EXECU-
4 TIVE OFFICERS.—A regulated entity that is classified as
5 significantly undercapitalized in accordance with section
6 1364 may not, without prior written approval by the Di-
7 rector—

8 “(1) pay any bonus to any executive officer; or

9 “(2) provide compensation to any executive offi-
10 cer at a rate exceeding the average rate of com-
11 pensation of that officer (excluding bonuses, stock
12 options, and profit sharing) during the 12 calendar
13 months preceding the calendar month in which the
14 regulated entity became significantly undercapital-
15 ized.”.

16 **SEC. 145. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
17 **IZED REGULATED ENTITIES.**

18 (a) IN GENERAL.—Section 1367 of the Federal
19 Housing Enterprises Financial Safety and Soundness Act
20 of 1992 (12 U.S.C. 4617) is amended to read as follows:

21 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
22 **IZED REGULATED ENTITIES.**

23 “(a) APPOINTMENT OF THE AGENCY AS CONSER-
24 VATOR OR RECEIVER.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of Federal or State law, the Director may
3 appoint the Agency as conservator or receiver for a
4 regulated entity in the manner provided under para-
5 graph (2) or (4). All references to the conservator or
6 receiver under this section are references to the
7 Agency acting as conservator or receiver.

8 “(2) DISCRETIONARY APPOINTMENT.—The
9 Agency may, at the discretion of the Director, be ap-
10 pointed conservator or receiver for the purpose of re-
11 organizing, rehabilitating, or winding up the affairs
12 of a regulated entity.

13 “(3) GROUNDS FOR DISCRETIONARY APPOINT-
14 MENT OF CONSERVATOR OR RECEIVER.—The
15 grounds for appointing conservator or receiver for
16 any regulated entity under paragraph (2) are as fol-
17 lows:

18 “(A) SUBSTANTIAL DISSIPATION.—Sub-
19 stantial dissipation of assets or earnings due
20 to—

21 “(i) any violation of any provision of
22 Federal or State law; or

23 “(ii) any unsafe or unsound practice.

1 “(B) UNSAFE OR UNSOUND CONDITION.—
2 An unsafe or unsound condition to transact
3 business.

4 “(C) CEASE AND DESIST ORDERS.—Any
5 willful violation of a cease and desist order that
6 has become final.

7 “(D) CONCEALMENT.—Any concealment of
8 the books, papers, records, or assets of the reg-
9 ulated entity, or any refusal to submit the
10 books, papers, records, or affairs of the regu-
11 lated entity, for inspection to any examiner or
12 to any lawful agent of the Director.

13 “(E) INABILITY TO MEET OBLIGATIONS.—
14 The regulated entity is likely to be unable to
15 pay its obligations or meet the demands of its
16 creditors in the normal course of business.

17 “(F) LOSSES.—The regulated entity has
18 incurred or is likely to incur losses that will de-
19 plete all or substantially all of its capital, and
20 there is no reasonable prospect for the regu-
21 lated entity to become adequately capitalized
22 (as defined in section 1364(a)(1)).

23 “(G) VIOLATIONS OF LAW.—Any violation
24 of any law or regulation, or any unsafe or un-
25 sound practice or condition that is likely to—

1 “(i) cause insolvency or substantial
2 dissipation of assets or earnings; or

3 “(ii) weaken the condition of the regu-
4 lated entity.

5 “(H) CONSENT.—The regulated entity, by
6 resolution of its board of directors or its share-
7 holders or members, consents to the appoint-
8 ment.

9 “(I) UNDERCAPITALIZATION.—The regu-
10 lated entity is undercapitalized or significantly
11 undercapitalized (as defined in section
12 1364(a)(3)), and—

13 “(i) has no reasonable prospect of be-
14 coming adequately capitalized;

15 “(ii) fails to become adequately cap-
16 italized, as required by—

17 “(I) section 1365(a)(1) with re-
18 spect to a regulated entity; or

19 “(II) section 1366(a)(1) with re-
20 spect to a significantly undercapital-
21 ized regulated entity;

22 “(iii) fails to submit a capital restora-
23 tion plan acceptable to the Agency within
24 the time prescribed under section 1369C;
25 or

1 “(iv) materially fails to implement a
2 capital restoration plan submitted and ac-
3 cepted under section 1369C.

4 “(J) CRITICAL UNDERCAPITALIZATION.—
5 The regulated entity is critically undercapital-
6 ized, as defined in section 1364(a)(4).

7 “(K) MONEY LAUNDERING.—The Attorney
8 General notifies the Director in writing that the
9 regulated entity has been found guilty of a
10 criminal offense under section 1956 or 1957 of
11 title 18, United States Code, or section 5322 or
12 5324 of title 31, United States Code.

13 “(4) MANDATORY RECEIVERSHIP.—

14 “(A) IN GENERAL.—The Director shall ap-
15 point the Agency as receiver for a regulated en-
16 tity if the Director determines, in writing,
17 that—

18 “(i) the assets of the regulated entity
19 are, and during the preceding 60 calendar
20 days have been, less than the obligations of
21 the regulated entity to its creditors and
22 others; or

23 “(ii) the regulated entity is not, and
24 during the preceding 60 calendar days has
25 not been, generally paying the debts of the

1 regulated entity (other than debts that are
2 the subject of a bona fide dispute) as such
3 debts become due.

4 “(B) PERIODIC DETERMINATION RE-
5 QUIRED FOR CRITICALLY UNDERCAPITALIZED
6 REGULATED ENTITY.—If a regulated entity is
7 critically undercapitalized, the Director shall
8 make a determination, in writing, as to whether
9 the regulated entity meets the criteria specified
10 in clause (i) or (ii) of subparagraph (A)—

11 “(i) not later than 30 calendar days
12 after the regulated entity initially becomes
13 critically undercapitalized; and

14 “(ii) at least once during each suc-
15 ceeding 30-calendar day period.

16 “(C) DETERMINATION NOT REQUIRED IF
17 RECEIVERSHIP ALREADY IN PLACE.—Subpara-
18 graph (B) does not apply with respect to a reg-
19 ulated entity in any period during which the
20 Agency serves as receiver for the regulated enti-
21 ty.

22 “(D) RECEIVERSHIP TERMINATES CON-
23 SERVATORSHIP.—The appointment of the Agen-
24 cy as receiver of a regulated entity under this
25 section shall immediately terminate any con-

1 servatorship established for the regulated entity
2 under this title.

3 “(5) JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—If the Agency is ap-
5 pointed conservator or receiver under this sec-
6 tion, the regulated entity may, within 30 days
7 of such appointment, bring an action in the
8 United States district court for the judicial dis-
9 trict in which the home office of such regulated
10 entity is located, or in the United States Dis-
11 trict Court for the District of Columbia, for an
12 order requiring the Agency to remove itself as
13 conservator or receiver.

14 “(B) REVIEW.—Upon the filing of an ac-
15 tion under subparagraph (A), the court shall,
16 upon the merits, dismiss such action or direct
17 the Agency to remove itself as such conservator
18 or receiver.

19 “(6) DIRECTORS NOT LIABLE FOR ACQUI-
20 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
21 CEIVER.—The members of the board of directors of
22 a regulated entity shall not be liable to the share-
23 holders or creditors of the regulated entity for acqui-
24 escing in or consenting in good faith to the appoint-

1 ment of the Agency as conservator or receiver for
2 that regulated entity.

3 “(7) AGENCY NOT SUBJECT TO ANY OTHER
4 FEDERAL AGENCY.—When acting as conservator or
5 receiver, the Agency shall not be subject to the di-
6 rection or supervision of any other agency of the
7 United States or any State in the exercise of the
8 rights, powers, and privileges of the Agency.

9 “(b) POWERS AND DUTIES OF THE AGENCY AS CON-
10 SERVATOR OR RECEIVER.—

11 “(1) RULEMAKING AUTHORITY OF THE AGEN-
12 CY.—The Agency may prescribe such regulations as
13 the Agency determines to be appropriate regarding
14 the conduct of conservatorships or receiverships.

15 “(2) GENERAL POWERS.—

16 “(A) SUCCESSOR TO REGULATED ENTI-
17 TY.—The Agency shall, as conservator or re-
18 ceiver, and by operation of law, immediately
19 succeed to—

20 “(i) all rights, titles, powers, and
21 privileges of the regulated entity, and of
22 any stockholder, officer, or director of such
23 regulated entity with respect to the regu-
24 lated entity and the assets of the regulated
25 entity; and

1 “(ii) title to the books, records, and
2 assets of any other legal custodian of such
3 regulated entity.

4 “(B) OPERATE THE REGULATED ENTI-
5 TY.—The Agency may, as conservator or re-
6 ceiver—

7 “(i) take over the assets of and oper-
8 ate the regulated entity with all the powers
9 of the shareholders, the directors, and the
10 officers of the regulated entity and conduct
11 all business of the regulated entity;

12 “(ii) collect all obligations and money
13 due the regulated entity;

14 “(iii) perform all functions of the reg-
15 ulated entity in the name of the regulated
16 entity which are consistent with the ap-
17 pointment as conservator or receiver;

18 “(iv) preserve and conserve the assets
19 and property of the regulated entity; and

20 “(v) provide by contract for assistance
21 in fulfilling any function, activity, action,
22 or duty of the Agency as conservator or re-
23 ceiver.

24 “(C) FUNCTIONS OF OFFICERS, DIREC-
25 TORS, AND SHAREHOLDERS OF A REGULATED

1 ENTITY.—The Agency may, by regulation or
2 order, provide for the exercise of any function
3 by any stockholder, director, or officer of any
4 regulated entity for which the Agency has been
5 named conservator or receiver.

6 “(D) POWERS AS CONSERVATOR.—The
7 Agency may, as conservator, take such action
8 as may be—

9 “(i) necessary to put the regulated en-
10 tity in a sound and solvent condition; and

11 “(ii) appropriate to carry on the busi-
12 ness of the regulated entity and preserve
13 and conserve the assets and property of
14 the regulated entity.

15 “(E) ADDITIONAL POWERS AS RE-
16 CEIVER.—In any case in which the Agency is
17 acting as receiver, the Agency shall place the
18 regulated entity in liquidation and proceed to
19 realize upon the assets of the regulated entity
20 in such manner as the Agency deems appro-
21 priate, including through the sale of assets, the
22 transfer of assets to a limited-life regulated en-
23 tity established under subsection (i), or the ex-
24 ercise of any other rights or privileges granted
25 to the Agency under this paragraph.

1 “(F) ORGANIZATION OF NEW ENTER-
2 PRISE.—The Agency shall, as receiver for an
3 enterprise, organize a successor enterprise that
4 will operate pursuant to subsection (i).

5 “(G) TRANSFER OR SALE OF ASSETS AND
6 LIABILITIES.—The Agency may, as conservator
7 or receiver, transfer or sell any asset or liability
8 of the regulated entity in default, and may do
9 so without any approval, assignment, or consent
10 with respect to such transfer or sale.

11 “(H) PAYMENT OF VALID OBLIGATIONS.—
12 The Agency, as conservator or receiver, shall, to
13 the extent of proceeds realized from the per-
14 formance of contracts or sale of the assets of a
15 regulated entity, pay all valid obligations of the
16 regulated entity that are due and payable at the
17 time of the appointment of the Agency as con-
18 servator or receiver, in accordance with the pre-
19 scriptions and limitations of this section.

20 “(I) SUBPOENA AUTHORITY.—

21 “(i) IN GENERAL.—

22 “(I) AGENCY AUTHORITY.—The
23 Agency may, as conservator or re-
24 ceiver, and for purposes of carrying
25 out any power, authority, or duty with

1 respect to a regulated entity (includ-
2 ing determining any claim against the
3 regulated entity and determining and
4 realizing upon any asset of any person
5 in the course of collecting money due
6 the regulated entity), exercise any
7 power established under section 1348.

8 “(II) APPLICABILITY OF LAW.—

9 The provisions of section 1348 shall
10 apply with respect to the exercise of
11 any power under this subparagraph,
12 in the same manner as such provi-
13 sions apply under that section.

14 “(ii) SUBPOENA.—A subpoena or sub-
15 poena duces tecum may be issued under
16 clause (i) only by, or with the written ap-
17 proval of, the Director, or the designee of
18 the Director.

19 “(iii) RULE OF CONSTRUCTION.—This
20 subsection shall not be construed to limit
21 any rights that the Agency, in any capac-
22 ity, might otherwise have under section
23 1317 or 1379B.

24 “(J) INCIDENTAL POWERS.—The Agency
25 may, as conservator or receiver—

1 “(i) exercise all powers and authori-
2 ties specifically granted to conservators or
3 receivers, respectively, under this section,
4 and such incidental powers as shall be nec-
5 essary to carry out such powers; and

6 “(ii) take any action authorized by
7 this section, which the Agency determines
8 is in the best interests of the regulated en-
9 tity or the Agency.

10 “(K) OTHER PROVISIONS.—

11 “(i) SHAREHOLDERS AND CREDITORS
12 OF FAILED REGULATED ENTITY.—Not-
13 withstanding any other provision of law,
14 the appointment of the Agency as receiver
15 for a regulated entity pursuant to para-
16 graph (2) or (4) of subsection (a) and its
17 succession, by operation of law, to the
18 rights, titles, powers, and privileges de-
19 scribed in subsection (b)(2)(A) shall termi-
20 nate all rights and claims that the stock-
21 holders and creditors of the regulated enti-
22 ty may have against the assets or charter
23 of the regulated entity or the Agency aris-
24 ing as a result of their status as stock-
25 holders or creditors, except for their right

1 to payment, resolution, or other satisfac-
2 tion of their claims, as permitted under
3 subsections (b)(9), (c), and (e).

4 “(ii) ASSETS OF REGULATED ENTI-
5 TY.—Notwithstanding any other provision
6 of law, for purposes of this section, the
7 charter of a regulated entity shall not be
8 considered an asset of the regulated entity.

9 “(3) AUTHORITY OF RECEIVER TO DETERMINE
10 CLAIMS.—

11 “(A) IN GENERAL.—The Agency may, as
12 receiver, determine claims in accordance with
13 the requirements of this subsection and any
14 regulations prescribed under paragraph (4).

15 “(B) NOTICE REQUIREMENTS.—The re-
16 ceiver, in any case involving the liquidation or
17 winding up of the affairs of a closed regulated
18 entity, shall—

19 “(i) promptly publish a notice to the
20 creditors of the regulated entity to present
21 their claims, together with proof, to the re-
22 ceiver by a date specified in the notice
23 which shall be not less than 90 days after
24 the date of publication of such notice; and

1 “(ii) republish such notice approxi-
2 mately 1 month and 2 months, respec-
3 tively, after the date of publication under
4 clause (i).

5 “(C) MAILING REQUIRED.—The receiver
6 shall mail a notice similar to the notice pub-
7 lished under subparagraph (B)(i) at the time of
8 such publication to any creditor shown on the
9 books of the regulated entity—

10 “(i) at the last address of the creditor
11 appearing in such books; or

12 “(ii) upon discovery of the name and
13 address of a claimant not appearing on the
14 books of the regulated entity, within 30
15 days after the discovery of such name and
16 address.

17 “(4) RULEMAKING AUTHORITY RELATING TO
18 DETERMINATION OF CLAIMS.—Subject to subsection
19 (c), the Director may prescribe regulations regarding
20 the allowance or disallowance of claims by the re-
21 ceiver and providing for administrative determina-
22 tion of claims and review of such determination.

23 “(5) PROCEDURES FOR DETERMINATION OF
24 CLAIMS.—

25 “(A) DETERMINATION PERIOD.—

1 “(i) IN GENERAL.—Before the end of
2 the 180-day period beginning on the date
3 on which any claim against a regulated en-
4 tity is filed with the Agency as receiver,
5 the Agency shall determine whether to
6 allow or disallow the claim and shall notify
7 the claimant of any determination with re-
8 spect to such claim.

9 “(ii) EXTENSION OF TIME.—The pe-
10 riod described in clause (i) may be ex-
11 tended by a written agreement between the
12 claimant and the Agency.

13 “(iii) MAILING OF NOTICE SUFFI-
14 CIENT.—The requirements of clause (i)
15 shall be deemed to be satisfied if the notice
16 of any determination with respect to any
17 claim is mailed to the last address of the
18 claimant which appears—

19 “(I) on the books of the regu-
20 lated entity;

21 “(II) in the claim filed by the
22 claimant; or

23 “(III) in documents submitted in
24 proof of the claim.

1 “(iv) CONTENTS OF NOTICE OF DIS-
2 ALLOWANCE.—If any claim filed under
3 clause (i) is disallowed, the notice to the
4 claimant shall contain—

5 “(I) a statement of each reason
6 for the disallowance; and

7 “(II) the procedures available for
8 obtaining agency review of the deter-
9 mination to disallow the claim or judi-
10 cial determination of the claim.

11 “(B) ALLOWANCE OF PROVEN CLAIM.—
12 The receiver shall allow any claim received on
13 or before the date specified in the notice pub-
14 lished under paragraph (3)(B)(i) by the receiver
15 from any claimant which is proved to the satis-
16 faction of the receiver.

17 “(C) DISALLOWANCE OF CLAIMS FILED
18 AFTER FILING PERIOD.—Claims filed after the
19 date specified in the notice published under
20 paragraph (3)(B)(i), or the date specified under
21 paragraph (3)(C), shall be disallowed and such
22 disallowance shall be final.

23 “(D) AUTHORITY TO DISALLOW CLAIMS.—

24 “(i) IN GENERAL.—The receiver may
25 disallow any portion of any claim by a

1 creditor or claim of security, preference, or
2 priority which is not proved to the satisfac-
3 tion of the receiver.

4 “(ii) PAYMENTS TO LESS THAN
5 FULLY SECURED CREDITORS.—In the case
6 of a claim of a creditor against a regulated
7 entity which is secured by any property or
8 other asset of such regulated entity, the re-
9 ceiver—

10 “(I) may treat the portion of
11 such claim which exceeds an amount
12 equal to the fair market value of such
13 property or other asset as an unse-
14 cured claim against the regulated en-
15 tity; and

16 “(II) may not make any payment
17 with respect to such unsecured por-
18 tion of the claim, other than in con-
19 nection with the disposition of all
20 claims of unsecured creditors of the
21 regulated entity.

22 “(iii) EXCEPTIONS.—No provision of
23 this paragraph shall apply with respect
24 to—

1 “(I) any extension of credit from
2 any Federal Reserve Bank, Federal
3 Home Loan Bank, or the United
4 States Treasury; or

5 “(II) any security interest in the
6 assets of the regulated entity securing
7 any such extension of credit.

8 “(E) NO JUDICIAL REVIEW OF DETER-
9 MINATION PURSUANT TO SUBPARAGRAPH (D).—
10 No court may review the determination of the
11 Agency under subparagraph (D) to disallow a
12 claim.

13 “(F) LEGAL EFFECT OF FILING.—

14 “(i) STATUTE OF LIMITATION
15 TOLLED.—For purposes of any applicable
16 statute of limitations, the filing of a claim
17 with the receiver shall constitute a com-
18 mencement of an action.

19 “(ii) NO PREJUDICE TO OTHER AC-
20 TIONS.—Subject to paragraph (10), the fil-
21 ing of a claim with the receiver shall not
22 prejudice any right of the claimant to con-
23 tinue any action which was filed before the
24 date of the appointment of the receiver,

1 subject to the determination of claims by
2 the receiver.

3 “(6) PROVISION FOR JUDICIAL DETERMINATION
4 OF CLAIMS.—

5 “(A) IN GENERAL.—The claimant may file
6 suit on a claim (or continue an action com-
7 menced before the appointment of the receiver)
8 in the district or territorial court of the United
9 States for the district within which the prin-
10 cipal place of business of the regulated entity is
11 located or the United States District Court for
12 the District of Columbia (and such court shall
13 have jurisdiction to hear such claim), before the
14 end of the 60-day period beginning on the ear-
15 lier of—

16 “(i) the end of the period described in
17 paragraph (5)(A)(i) with respect to any
18 claim against a regulated entity for which
19 the Agency is receiver; or

20 “(ii) the date of any notice of dis-
21 allowance of such claim pursuant to para-
22 graph (5)(A)(i).

23 “(B) STATUTE OF LIMITATIONS.—A claim
24 shall be deemed to be disallowed (other than
25 any portion of such claim which was allowed by

1 the receiver), and such disallowance shall be
2 final, and the claimant shall have no further
3 rights or remedies with respect to such claim,
4 if the claimant fails, before the end of the 60-
5 day period described under subparagraph (A),
6 to file suit on such claim (or continue an action
7 commenced before the appointment of the re-
8 ceiver).

9 “(7) REVIEW OF CLAIMS.—

10 “(A) OTHER REVIEW PROCEDURES.—

11 “(i) IN GENERAL.—The Agency shall
12 establish such alternative dispute resolu-
13 tion processes as may be appropriate for
14 the resolution of claims filed under para-
15 graph (5)(A)(i).

16 “(ii) CRITERIA.—In establishing alter-
17 native dispute resolution processes, the
18 Agency shall strive for procedures which
19 are expeditious, fair, independent, and low
20 cost.

21 “(iii) VOLUNTARY BINDING OR NON-
22 BINDING PROCEDURES.—The Agency may
23 establish both binding and nonbinding
24 processes under this subparagraph, which
25 may be conducted by any government or

1 private party. All parties, including the
2 claimant and the Agency, must agree to
3 the use of the process in a particular case.

4 “(B) CONSIDERATION OF INCENTIVES.—
5 The Agency shall seek to develop incentives for
6 claimants to participate in the alternative dis-
7 pute resolution process.

8 “(8) EXPEDITED DETERMINATION OF
9 CLAIMS.—

10 “(A) ESTABLISHMENT REQUIRED.—The
11 Agency shall establish a procedure for expedited
12 relief outside of the routine claims process es-
13 tablished under paragraph (5) for claimants
14 who—

15 “(i) allege the existence of legally
16 valid and enforceable or perfected security
17 interests in assets of any regulated entity
18 for which the Agency has been appointed
19 receiver; and

20 “(ii) allege that irreparable injury will
21 occur if the routine claims procedure is fol-
22 lowed.

23 “(B) DETERMINATION PERIOD.—Before
24 the end of the 90-day period beginning on the
25 date on which any claim is filed in accordance

1 with the procedures established under subpara-
2 graph (A), the Director shall—

3 “(i) determine—

4 “(I) whether to allow or disallow
5 such claim; or

6 “(II) whether such claim should
7 be determined pursuant to the proce-
8 dures established under paragraph
9 (5); and

10 “(ii) notify the claimant of the deter-
11 mination, and if the claim is disallowed,
12 provide a statement of each reason for the
13 disallowance and the procedure for obtain-
14 ing agency review or judicial determina-
15 tion.

16 “(C) PERIOD FOR FILING OR RENEWING
17 SUIT.—Any claimant who files a request for ex-
18 pedited relief shall be permitted to file a suit,
19 or to continue a suit filed before the date of ap-
20 pointment of the receiver, seeking a determina-
21 tion of the rights of the claimant with respect
22 to such security interest after the earlier of—

23 “(i) the end of the 90-day period be-
24 ginning on the date of the filing of a re-
25 quest for expedited relief; or

1 “(ii) the date on which the Agency de-
2 nies the claim.

3 “(D) STATUTE OF LIMITATIONS.—If an
4 action described under subparagraph (C) is not
5 filed, or the motion to renew a previously filed
6 suit is not made, before the end of the 30-day
7 period beginning on the date on which such ac-
8 tion or motion may be filed under subparagraph
9 (B), the claim shall be deemed to be disallowed
10 as of the end of such period (other than any
11 portion of such claim which was allowed by the
12 receiver), such disallowance shall be final, and
13 the claimant shall have no further rights or
14 remedies with respect to such claim.

15 “(E) LEGAL EFFECT OF FILING.—

16 “(i) STATUTE OF LIMITATION
17 TOLLED.—For purposes of any applicable
18 statute of limitations, the filing of a claim
19 with the receiver shall constitute a com-
20 mencement of an action.

21 “(ii) NO PREJUDICE TO OTHER AC-
22 TIONS.—Subject to paragraph (10), the fil-
23 ing of a claim with the receiver shall not
24 prejudice any right of the claimant to con-
25 tinue any action that was filed before the

1 appointment of the receiver, subject to the
2 determination of claims by the receiver.

3 “(9) PAYMENT OF CLAIMS.—

4 “(A) IN GENERAL.—The receiver may, in
5 the discretion of the receiver, and to the extent
6 that funds are available from the assets of the
7 regulated entity, pay creditor claims, in such
8 manner and amounts as are authorized under
9 this section, which are—

10 “(i) allowed by the receiver;

11 “(ii) approved by the Agency pursuant
12 to a final determination pursuant to para-
13 graph (7) or (8); or

14 “(iii) determined by the final judg-
15 ment of any court of competent jurisdic-
16 tion.

17 “(B) AGREEMENTS AGAINST THE INTER-
18 EST OF THE AGENCY.—No agreement that
19 tends to diminish or defeat the interest of the
20 Agency in any asset acquired by the Agency as
21 receiver under this section shall be valid against
22 the Agency unless such agreement is in writing
23 and executed by an authorized officer or rep-
24 resentative of the regulated entity.

1 “(C) PAYMENT OF DIVIDENDS ON
2 CLAIMS.—The receiver may, in the sole discre-
3 tion of the receiver, pay from the assets of the
4 regulated entity dividends on proved claims at
5 any time, and no liability shall attach to the
6 Agency by reason of any such payment, for fail-
7 ure to pay dividends to a claimant whose claim
8 is not proved at the time of any such payment.

9 “(D) RULEMAKING AUTHORITY OF THE
10 DIRECTOR.—The Director may prescribe such
11 rules, including definitions of terms, as the Di-
12 rector deems appropriate to establish a single
13 uniform interest rate for, or to make payments
14 of post-insolvency interest to creditors holding
15 proven claims against the receivership estates of
16 the regulated entity, following satisfaction by
17 the receiver of the principal amount of all cred-
18 itor claims.

19 “(10) SUSPENSION OF LEGAL ACTIONS.—

20 “(A) IN GENERAL.—After the appointment
21 of a conservator or receiver for a regulated enti-
22 ty, the conservator or receiver may, in any judi-
23 cial action or proceeding to which such regu-
24 lated entity is or becomes a party, request a
25 stay for a period not to exceed—

1 “(i) 45 days, in the case of any con-
2 servator; and

3 “(ii) 90 days, in the case of any re-
4 ceiver.

5 “(B) GRANT OF STAY BY ALL COURTS RE-
6 QUIRED.—Upon receipt of a request by the con-
7 servator or receiver under subparagraph (A) for
8 a stay of any judicial action or proceeding in
9 any court with jurisdiction of such action or
10 proceeding, the court shall grant such stay as
11 to all parties.

12 “(11) ADDITIONAL RIGHTS AND DUTIES.—

13 “(A) PRIOR FINAL ADJUDICATION.—The
14 Agency shall abide by any final unappealable
15 judgment of any court of competent jurisdiction
16 which was rendered before the appointment of
17 the Agency as conservator or receiver.

18 “(B) RIGHTS AND REMEDIES OF CONSER-
19 VATOR OR RECEIVER.—In the event of any ap-
20 pealable judgment, the Agency as conservator
21 or receiver—

22 “(i) shall have all of the rights and
23 remedies available to the regulated entity
24 (before the appointment of such conser-
25 vator or receiver) and the Agency, includ-

1 ing removal to Federal court and all appel-
2 late rights; and

3 “(ii) shall not be required to post any
4 bond in order to pursue such remedies.

5 “(C) NO ATTACHMENT OR EXECUTION.—

6 No attachment or execution may issue by any
7 court upon assets in the possession of the re-
8 ceiver, or upon the charter, of a regulated enti-
9 ty for which the Agency has been appointed re-
10 ceiver.

11 “(D) LIMITATION ON JUDICIAL REVIEW.—

12 Except as otherwise provided in this subsection,
13 no court shall have jurisdiction over—

14 “(i) any claim or action for payment
15 from, or any action seeking a determina-
16 tion of rights with respect to, the assets or
17 charter of any regulated entity for which
18 the Agency has been appointed receiver; or

19 “(ii) any claim relating to any act or
20 omission of such regulated entity or the
21 Agency as receiver.

22 “(E) DISPOSITION OF ASSETS.—In exer-

23 cising any right, power, privilege, or authority
24 as conservator or receiver in connection with
25 any sale or disposition of assets of a regulated

1 entity for which the Agency has been appointed
2 conservator or receiver, the Agency shall con-
3 duct its operations in a manner which—

4 “(i) maximizes the net present value
5 return from the sale or disposition of such
6 assets;

7 “(ii) minimizes the amount of any loss
8 realized in the resolution of cases; and

9 “(iii) ensures adequate competition
10 and fair and consistent treatment of
11 offerors.

12 “(12) STATUTE OF LIMITATIONS FOR ACTIONS
13 BROUGHT BY CONSERVATOR OR RECEIVER.—

14 “(A) IN GENERAL.—Notwithstanding any
15 provision of any contract, the applicable statute
16 of limitations with regard to any action brought
17 by the Agency as conservator or receiver shall
18 be—

19 “(i) in the case of any contract claim,
20 the longer of—

21 “(I) the 6-year period beginning
22 on the date on which the claim ac-
23 crues; or

24 “(II) the period applicable under
25 State law; and

1 “(ii) in the case of any tort claim, the
2 longer of—

3 “(I) the 3-year period beginning
4 on the date on which the claim ac-
5 crues; or

6 “(II) the period applicable under
7 State law.

8 “(B) DETERMINATION OF THE DATE ON
9 WHICH A CLAIM ACCRUES.—For purposes of
10 subparagraph (A), the date on which the stat-
11 ute of limitations begins to run on any claim
12 described in such subparagraph shall be the
13 later of—

14 “(i) the date of the appointment of
15 the Agency as conservator or receiver; or

16 “(ii) the date on which the cause of
17 action accrues.

18 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
19 ACTION.—

20 “(A) IN GENERAL.—In the case of any tort
21 claim described under clause (ii) for which the
22 statute of limitations applicable under State law
23 with respect to such claim has expired not more
24 than 5 years before the appointment of the
25 Agency as conservator or receiver, the Agency

1 may bring an action as conservator or receiver
2 on such claim without regard to the expiration
3 of the statute of limitations applicable under
4 State law.

5 “(B) CLAIMS DESCRIBED.—A tort claim
6 referred to under clause (i) is a claim arising
7 from fraud, intentional misconduct resulting in
8 unjust enrichment, or intentional misconduct
9 resulting in substantial loss to the regulated en-
10 tity.

11 “(14) ACCOUNTING AND RECORDKEEPING RE-
12 QUIREMENTS.—

13 “(A) IN GENERAL.—The Agency as conser-
14 vator or receiver shall, consistent with the ac-
15 counting and reporting practices and proce-
16 dures established by the Agency, maintain a full
17 accounting of each conservatorship and receiv-
18 ership or other disposition of a regulated entity
19 in default.

20 “(B) ANNUAL ACCOUNTING OR REPORT.—
21 With respect to each conservatorship or receiv-
22 ership, the Agency shall make an annual ac-
23 counting or report available to the Board, the
24 Comptroller General of the United States, the
25 Committee on Banking, Housing, and Urban

1 Affairs of the Senate, and the Committee on
2 Financial Services of the House of Representa-
3 tives.

4 “(C) AVAILABILITY OF REPORTS.—Any re-
5 port prepared under subparagraph (B) shall be
6 made available by the Agency upon request to
7 any shareholder of a regulated entity or any
8 member of the public.

9 “(D) RECORDKEEPING REQUIREMENT.—
10 After the end of the 6-year period beginning on
11 the date on which the conservatorship or receiv-
12 ership is terminated by the Director, the Agen-
13 cy may destroy any records of such regulated
14 entity which the Agency, in the discretion of the
15 Agency, determines to be unnecessary, unless
16 directed not to do so by a court of competent
17 jurisdiction or governmental agency, or prohib-
18 ited by law.

19 “(15) FRAUDULENT TRANSFERS.—

20 “(A) IN GENERAL.—The Agency, as con-
21 servator or receiver, may avoid a transfer of
22 any interest of an entity-affiliated party, or any
23 person determined by the conservator or re-
24 ceiver to be a debtor of the regulated entity, in
25 property, or any obligation incurred by such

1 party or person, that was made within 5 years
2 of the date on which the Agency was appointed
3 conservator or receiver, if such party or person
4 voluntarily or involuntarily made such transfer
5 or incurred such liability with the intent to
6 hinder, delay, or defraud the regulated entity,
7 the Agency, the conservator, or receiver.

8 “(B) RIGHT OF RECOVERY.—To the extent
9 a transfer is avoided under subparagraph (A),
10 the conservator or receiver may recover, for the
11 benefit of the regulated entity, the property
12 transferred, or, if a court so orders, the value
13 of such property (at the time of such transfer)
14 from—

15 “(i) the initial transferee of such
16 transfer or the entity-affiliated party or
17 person for whose benefit such transfer was
18 made; or

19 “(ii) any immediate or mediate trans-
20 feree of any such initial transferee.

21 “(C) RIGHTS OF TRANSFeree OR OBLI-
22 GEE.—The conservator or receiver may not re-
23 cover under subparagraph (B) from—

24 “(i) any transferee that takes for
25 value, including satisfaction or securing of

1 a present or antecedent debt, in good faith;
2 or

3 “(ii) any immediate or mediate good
4 faith transferee of such transferee.

5 “(D) RIGHTS UNDER THIS PARAGRAPH.—

6 The rights under this paragraph of the conser-
7 vator or receiver described under subparagraph
8 (A) shall be superior to any rights of a trustee
9 or any other party (other than any party which
10 is a Federal agency) under title 11, United
11 States Code.

12 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
13 JUNCTIVE RELIEF.—Subject to paragraph (17), any
14 court of competent jurisdiction may, at the request
15 of the conservator or receiver, issue an order in ac-
16 cordance with rule 65 of the Federal Rules of Civil
17 Procedure, including an order placing the assets of
18 any person designated by the conservator or receiver
19 under the control of the court, and appointing a
20 trustee to hold such assets.

21 “(17) STANDARDS OF PROOF.—Rule 65 of the
22 Federal Rules of Civil Procedure shall apply with re-
23 spect to any proceeding under paragraph (16) with-
24 out regard to the requirement of such rule that the

1 applicant show that the injury, loss, or damage is ir-
2 reparable and immediate.

3 “(18) TREATMENT OF CLAIMS ARISING FROM
4 BREACH OF CONTRACTS EXECUTED BY THE CON-
5 SERVATOR OR RECEIVER.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other provision of this subsection, any final and
8 unappealable judgment for monetary damages
9 entered against the conservator or receiver for
10 the breach of an agreement executed or ap-
11 proved in writing by the conservator or receiver
12 after the date of its appointment, shall be paid
13 as an administrative expense of the conservator
14 or receiver.

15 “(B) NO LIMITATION OF POWER.—Nothing
16 in this paragraph shall be construed to limit the
17 power of the conservator or receiver to exercise
18 any rights under contract or law, including to
19 terminate, breach, cancel, or otherwise dis-
20 continue such agreement.

21 “(19) GENERAL EXCEPTIONS.—

22 “(A) LIMITATIONS.—The rights of the
23 conservator or receiver appointed under this
24 section shall be subject to the limitations on the
25 powers of a receiver under sections 402 through

1 407 of the Federal Deposit Insurance Corpora-
2 tion Improvement Act of 1991 (12 U.S.C. 4402
3 through 4407).

4 “(B) MORTGAGES HELD IN TRUST.—

5 “(i) IN GENERAL.—Any mortgage,
6 pool of mortgages, or interest in a pool of
7 mortgages held in trust, custodial, or agen-
8 cy capacity by a regulated entity for the
9 benefit of any person other than the regu-
10 lated entity shall not be available to satisfy
11 the claims of creditors generally, except
12 that nothing in this clause shall be con-
13 strued to expand or otherwise affect the
14 authority of any regulated entity.

15 “(ii) HOLDING OF MORTGAGES.—Any
16 mortgage, pool of mortgages, or interest in
17 a pool of mortgages described in clause (i)
18 shall be held by the conservator or receiver
19 appointed under this section for the bene-
20 ficial owners of such mortgage, pool of
21 mortgages, or interest in accordance with
22 the terms of the agreement creating such
23 trust, custodial, or other agency arrange-
24 ment.

1 “(iii) LIABILITY OF CONSERVATOR OR
2 RECEIVER.—The liability of the conser-
3 vator or receiver appointed under this sec-
4 tion for damages shall, in the case of any
5 contingent or unliquidated claim relating
6 to the mortgages held in trust, be esti-
7 mated in accordance with the regulations
8 of the Director.

9 “(c) PRIORITY OF EXPENSES AND UNSECURED
10 CLAIMS.—

11 “(1) IN GENERAL.—Unsecured claims against a
12 regulated entity, or the receiver therefor, that are
13 proven to the satisfaction of the receiver shall have
14 priority in the following order:

15 “(A) Administrative expenses of the re-
16 ceiver.

17 “(B) Any other general or senior liability
18 of the regulated entity (which is not a liability
19 described under subparagraph (C) or (D)).

20 “(C) Any obligation subordinated to gen-
21 eral creditors (which is not an obligation de-
22 scribed under subparagraph (D)).

23 “(D) Any obligation to shareholders or
24 members arising as a result of their status as
25 shareholder or members.

1 “(2) CREDITORS SIMILARLY SITUATED.—All
2 creditors that are similarly situated under paragraph
3 (1) shall be treated in a similar manner, except that
4 the receiver may take any action (including making
5 payments) that does not comply with this subsection,
6 if—

7 “(A) the Director determines that such ac-
8 tion is necessary to maximize the value of the
9 assets of the regulated entity, to maximize the
10 present value return from the sale or other dis-
11 position of the assets of the regulated entity, or
12 to minimize the amount of any loss realized
13 upon the sale or other disposition of the assets
14 of the regulated entity; and

15 “(B) all creditors that are similarly situ-
16 ated under paragraph (1) receive not less than
17 the amount provided in subsection (e)(2).

18 “(3) DEFINITION.—As used in this subsection,
19 the term ‘administrative expenses of the receiver’ in-
20 cludes—

21 “(A) the actual, necessary costs and ex-
22 penses incurred by the receiver in preserving
23 the assets of a failed regulated entity or liqui-
24 dating or otherwise resolving the affairs of a
25 failed regulated entity; and

1 “(B) any obligations that the receiver de-
2 termines are necessary and appropriate to fa-
3 cilitate the smooth and orderly liquidation or
4 other resolution of the regulated entity.

5 “(d) PROVISIONS RELATING TO CONTRACTS EN-
6 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
7 OR RECEIVER.—

8 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
9 In addition to any other rights a conservator or re-
10 ceiver may have, the conservator or receiver for any
11 regulated entity may disaffirm or repudiate any con-
12 tract or lease—

13 “(A) to which such regulated entity is a
14 party;

15 “(B) the performance of which the conser-
16 vator or receiver, in its sole discretion, deter-
17 mines to be burdensome; and

18 “(C) the disaffirmance or repudiation of
19 which the conservator or receiver determines, in
20 its sole discretion, will promote the orderly ad-
21 ministration of the affairs of the regulated enti-
22 ty.

23 “(2) TIMING OF REPUDIATION.—The conser-
24 vator or receiver shall determine whether or not to
25 exercise the rights of repudiation under this sub-

1 section within a reasonable period following such ap-
2 pointment.

3 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
4 ATION.—

5 “(A) IN GENERAL.—Except as otherwise
6 provided under subparagraph (C) and para-
7 graphs (4), (5), and (6), the liability of the con-
8 servator or receiver for the disaffirmance or re-
9 pudiation of any contract pursuant to para-
10 graph (1) shall be—

11 “(i) limited to actual direct compen-
12 satory damages; and

13 “(ii) determined as of—

14 “(I) the date of the appointment
15 of the conservator or receiver; or

16 “(II) in the case of any contract
17 or agreement referred to in paragraph
18 (8), the date of the disaffirmance or
19 repudiation of such contract or agree-
20 ment.

21 “(B) NO LIABILITY FOR OTHER DAM-
22 AGES.—For purposes of subparagraph (A), the
23 term ‘actual direct compensatory damages’ shall
24 not include—

25 “(i) punitive or exemplary damages;

1 “(ii) damages for lost profits or op-
2 portunity; or

3 “(iii) damages for pain and suffering.

4 “(C) MEASURE OF DAMAGES FOR REPUDI-
5 ATION OF FINANCIAL CONTRACTS.—In the case
6 of any qualified financial contract or agreement
7 to which paragraph (8) applies, compensatory
8 damages shall be—

9 “(i) deemed to include normal and
10 reasonable costs of cover or other reason-
11 able measures of damages utilized in the
12 industries for such contract and agreement
13 claims; and

14 “(ii) paid in accordance with this sub-
15 section and subsection (e), except as other-
16 wise specifically provided in this section.

17 “(4) LEASES UNDER WHICH THE REGULATED
18 ENTITY IS THE LESSEE.—

19 “(A) IN GENERAL.—If the conservator or
20 receiver disaffirms or repudiates a lease under
21 which the regulated entity was the lessee, the
22 conservator or receiver shall not be liable for
23 any damages (other than damages determined
24 under subparagraph (B)) for the disaffirmance
25 or repudiation of such lease.

1 “(B) PAYMENTS OF RENT.—Notwith-
2 standing subparagraph (A), the lessor under a
3 lease to which that subparagraph applies
4 shall—

5 “(i) be entitled to the contractual rent
6 accruing before the later of the date on
7 which—

8 “(I) the notice of disaffirmance
9 or repudiation is mailed; or

10 “(II) the disaffirmance or repudi-
11 ation becomes effective, unless the les-
12 sor is in default or breach of the
13 terms of the lease;

14 “(ii) have no claim for damages under
15 any acceleration clause or other penalty
16 provision in the lease; and

17 “(iii) have a claim for any unpaid
18 rent, subject to all appropriate offsets and
19 defenses, due as of the date of the appoint-
20 ment, which shall be paid in accordance
21 with this subsection and subsection (e).

22 “(5) LEASES UNDER WHICH THE REGULATED
23 ENTITY IS THE LESSOR.—

24 “(A) IN GENERAL.—If the conservator or
25 receiver repudiates an unexpired written lease

1 of real property of the regulated entity under
2 which the regulated entity is the lessor and the
3 lessee is not, as of the date of such repudiation,
4 in default, the lessee under such lease may ei-
5 ther—

6 “(i) treat the lease as terminated by
7 such repudiation; or

8 “(ii) remain in possession of the lease-
9 hold interest for the balance of the term of
10 the lease, unless the lessee defaults under
11 the terms of the lease after the date of
12 such repudiation.

13 “(B) PROVISIONS APPLICABLE TO LESSEE
14 REMAINING IN POSSESSION.—If any lessee
15 under a lease described under subparagraph (A)
16 remains in possession of a leasehold interest
17 under clause (ii) of subparagraph (A)—

18 “(i) the lessee—

19 “(I) shall continue to pay the
20 contractual rent pursuant to the
21 terms of the lease after the date of
22 the repudiation of such lease; and

23 “(II) may offset against any rent
24 payment which accrues after the date
25 of the repudiation of the lease, and

1 any damages which accrue after such
 2 date due to the nonperformance of
 3 any obligation of the regulated entity
 4 under the lease after such date; and

5 “(ii) the conservator or receiver shall
 6 not be liable to the lessee for any damages
 7 arising after such date as a result of the
 8 repudiation, other than the amount of any
 9 offset allowed under clause (i)(II).

10 “(6) CONTRACTS FOR THE SALE OF REAL
 11 PROPERTY.—

12 “(A) IN GENERAL.—If the conservator or
 13 receiver repudiates any contract for the sale of
 14 real property and the purchaser of such real
 15 property under such contract is in possession,
 16 and is not, as of the date of such repudiation,
 17 in default, such purchaser may either—

18 “(i) treat the contract as terminated
 19 by such repudiation; or

20 “(ii) remain in possession of such real
 21 property.

22 “(B) PROVISIONS APPLICABLE TO PUR-
 23 CHASER REMAINING IN POSSESSION.—If any
 24 purchaser of real property under any contract
 25 described under subparagraph (A) remains in

1 possession of such property under clause (ii) of
2 subparagraph (A)—

3 “(i) the purchaser—

4 “(I) shall continue to make all
5 payments due under the contract after
6 the date of the repudiation of the con-
7 tract; and

8 “(II) may offset against any such
9 payments any damages which accrue
10 after such date due to the non-
11 performance (after such date) of any
12 obligation of the regulated entity
13 under the contract; and

14 “(ii) the conservator or receiver
15 shall—

16 “(I) not be liable to the pur-
17 chaser for any damages arising after
18 such date as a result of the repudi-
19 ation, other than the amount of any
20 offset allowed under clause (i)(II);

21 “(II) deliver title to the pur-
22 chaser in accordance with the provi-
23 sions of the contract; and

1 “(III) have no obligation under
2 the contract other than the perform-
3 ance required under subclause (II).

4 “(C) ASSIGNMENT AND SALE ALLOWED.—

5 “(i) IN GENERAL.—No provision of
6 this paragraph shall be construed as lim-
7 iting the right of the conservator or re-
8 ceiver to assign the contract described
9 under subparagraph (A), and sell the prop-
10 erty subject to the contract and the provi-
11 sions of this paragraph.

12 “(ii) NO LIABILITY AFTER ASSIGN-
13 MENT AND SALE.—If an assignment and
14 sale described under clause (i) is con-
15 summated, the conservator or receiver
16 shall have no further liability under the
17 contract described under subparagraph
18 (A), or with respect to the real property
19 which was the subject of such contract.

20 “(7) SERVICE CONTRACTS.—

21 “(A) SERVICES PERFORMED BEFORE AP-
22 POINTMENT.—In the case of any contract for
23 services between any person and any regulated
24 entity for which the Agency has been appointed
25 conservator or receiver, any claim of such per-

son for services performed before the appointment of the conservator or receiver shall be—

“(i) a claim to be paid in accordance with subsections (b) and (e); and

“(ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

“(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

“(i) the other party shall be paid under the terms of the contract for the services performed; and

“(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

“(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The ac-

1 ceptance by the conservator or receiver of serv-
2 ices referred to under subparagraph (B) in con-
3 nection with a contract described in such sub-
4 paragraph shall not affect the right of the con-
5 servator or receiver to repudiate such contract
6 under this section at any time after such per-
7 formance.

8 “(8) CERTAIN QUALIFIED FINANCIAL CON-
9 TRACTS.—

10 “(A) RIGHTS OF PARTIES TO CON-
11 TRACTS.—Subject to paragraphs (9) and (10),
12 and notwithstanding any other provision of this
13 title (other than subsection (b)(9)(B) of this
14 section), any other Federal law, or the law of
15 any State, no person shall be stayed or prohib-
16 ited from exercising—

17 “(i) any right of that person to cause
18 the termination, liquidation, or acceleration
19 of any qualified financial contract with a
20 regulated entity that arises upon the ap-
21 pointment of the Agency as receiver for
22 such regulated entity at any time after
23 such appointment;

24 “(ii) any right under any security
25 agreement or arrangement or other credit

1 enhancement relating to one or more quali-
2 fied financial contracts; or

3 “(iii) any right to offset or net out
4 any termination value, payment amount, or
5 other transfer obligation arising under or
6 in connection with 1 or more contracts and
7 agreements described in clause (i), includ-
8 ing any master agreement for such con-
9 tracts or agreements.

10 “(B) APPLICABILITY OF OTHER PROVI-
11 SIONS.—Subsection (b)(10) shall apply in the
12 case of any judicial action or proceeding
13 brought against any receiver referred to under
14 subparagraph (A), or the regulated entity for
15 which such receiver was appointed, by any
16 party to a contract or agreement described
17 under subparagraph (A)(i) with such regulated
18 entity.

19 “(C) CERTAIN TRANSFERS NOT AVOID-
20 ABLE.—

21 “(i) IN GENERAL.—Notwithstanding
22 paragraph (11), or any other provision of
23 Federal or State law relating to the avoid-
24 ance of preferential or fraudulent trans-
25 fers, the Agency, whether acting as such or

1 as conservator or receiver of a regulated
2 entity, may not avoid any transfer of
3 money or other property in connection with
4 any qualified financial contract with a reg-
5 ulated entity.

6 “(ii) EXCEPTION FOR CERTAIN
7 TRANSFERS.—Clause (i) shall not apply to
8 any transfer of money or other property in
9 connection with any qualified financial con-
10 tract with a regulated entity if the Agency
11 determines that the transferee had actual
12 intent to hinder, delay, or defraud such
13 regulated entity, the creditors of such reg-
14 ulated entity, or any conservator or re-
15 ceiver appointed for such regulated entity.

16 “(D) CERTAIN CONTRACTS AND AGREE-
17 MENTS DEFINED.—In this subsection the fol-
18 lowing definitions shall apply:

19 “(i) QUALIFIED FINANCIAL CON-
20 TRACT.—The term ‘qualified financial con-
21 tract’ means any securities contract, com-
22 modity contract, forward contract, repur-
23 chase agreement, swap agreement, and any
24 similar agreement that the Agency deter-
25 mines by regulation, resolution, or order to

1 be a qualified financial contract for pur-
2 poses of this paragraph.

3 “(ii) SECURITIES CONTRACT.—The
4 term ‘securities contract’—

5 “(I) means a contract for the
6 purchase, sale, or loan of a security, a
7 certificate of deposit, a mortgage loan,
8 or any interest in a mortgage loan, a
9 group or index of securities, certifi-
10 cates of deposit, or mortgage loans or
11 interests therein (including any inter-
12 est therein or based on the value
13 thereof) or any option on any of the
14 foregoing, including any option to
15 purchase or sell any such security,
16 certificate of deposit, mortgage loan,
17 interest, group or index, or option,
18 and including any repurchase or re-
19 verse repurchase transaction on any
20 such security, certificate of deposit,
21 mortgage loan, interest, group or
22 index, or option;

23 “(II) does not include any pur-
24 chase, sale, or repurchase obligation
25 under a participation in a commercial

1 mortgage loan, unless the Agency de-
2 termines by regulation, resolution, or
3 order to include any such agreement
4 within the meaning of such term;

5 “(III) means any option entered
6 into on a national securities exchange
7 relating to foreign currencies;

8 “(IV) means the guarantee by or
9 to any securities clearing agency of
10 any settlement of cash, securities, cer-
11 tificates of deposit, mortgage loans or
12 interests therein, group or index of se-
13 curities, certificates of deposit, or
14 mortgage loans or interests therein
15 (including any interest therein or
16 based on the value thereof) or option
17 on any of the foregoing, including any
18 option to purchase or sell any such se-
19 curity, certificate of deposit, mortgage
20 loan, interest, group or index, or op-
21 tion;

22 “(V) means any margin loan;

23 “(VI) means any other agree-
24 ment or transaction that is similar to

1 any agreement or transaction referred
2 to in this clause;

3 “(VII) means any combination of
4 the agreements or transactions re-
5 ferred to in this clause;

6 “(VIII) means any option to
7 enter into any agreement or trans-
8 action referred to in this clause;

9 “(IX) means a master agreement
10 that provides for an agreement or
11 transaction referred to in subclause
12 (I), (III), (IV), (V), (VI), (VII), or
13 (VIII), together with all supplements
14 to any such master agreement, with-
15 out regard to whether the master
16 agreement provides for an agreement
17 or transaction that is not a securities
18 contract under this clause, except that
19 the master agreement shall be consid-
20 ered to be a securities contract under
21 this clause only with respect to each
22 agreement or transaction under the
23 master agreement that is referred to
24 in subclause (I), (III), (IV), (V), (VI),
25 (VII), or (VIII); and

1 “(X) means any security agree-
2 ment or arrangement or other credit
3 enhancement related to any agree-
4 ment or transaction referred to in this
5 clause, including any guarantee or re-
6 imbursement obligation in connection
7 with any agreement or transaction re-
8 ferred to in this clause.

9 “(iii) COMMODITY CONTRACT.—The
10 term ‘commodity contract’ means—

11 “(I) with respect to a futures
12 commission merchant, a contract for
13 the purchase or sale of a commodity
14 for future delivery on, or subject to
15 the rules of, a contract market or
16 board of trade;

17 “(II) with respect to a foreign fu-
18 tures commission merchant, a foreign
19 future;

20 “(III) with respect to a leverage
21 transaction merchant, a leverage
22 transaction;

23 “(IV) with respect to a clearing
24 organization, a contract for the pur-
25 chase or sale of a commodity for fu-

1 ture delivery on, or subject to the
2 rules of, a contract market or board
3 of trade that is cleared by such clear-
4 ing organization, or commodity option
5 traded on, or subject to the rules of,
6 a contract market or board of trade
7 that is cleared by such clearing orga-
8 nization;

9 “(V) with respect to a commodity
10 options dealer, a commodity option;

11 “(VI) any other agreement or
12 transaction that is similar to any
13 agreement or transaction referred to
14 in this clause;

15 “(VII) any combination of the
16 agreements or transactions referred to
17 in this clause;

18 “(VIII) any option to enter into
19 any agreement or transaction referred
20 to in this clause;

21 “(IX) a master agreement that
22 provides for an agreement or trans-
23 action referred to in subclause (I),
24 (II), (III), (IV), (V), (VI), (VII), or
25 (VIII), together with all supplements

1 to any such master agreement, with-
2 out regard to whether the master
3 agreement provides for an agreement
4 or transaction that is not a com-
5 modity contract under this clause, ex-
6 cept that the master agreement shall
7 be considered to be a commodity con-
8 tract under this clause only with re-
9 spect to each agreement or trans-
10 action under the master agreement
11 that is referred to in subclause (I),
12 (II), (III), (IV), (V), (VI), (VII), or
13 (VIII); or

14 “(X) any security agreement or
15 arrangement or other credit enhance-
16 ment related to any agreement or
17 transaction referred to in this clause,
18 including any guarantee or reimburse-
19 ment obligation in connection with
20 any agreement or transaction referred
21 to in this clause.

22 “(iv) FORWARD CONTRACT.—The
23 term ‘forward contract’ means—

24 “(I) a contract (other than a
25 commodity contract) for the purchase,

1 sale, or transfer of a commodity or
2 any similar good, article, service,
3 right, or interest which is presently or
4 in the future becomes the subject of
5 dealing in the forward contract trade,
6 or product or byproduct thereof, with
7 a maturity date more than 2 days
8 after the date on which the contract is
9 entered into, including a repurchase
10 transaction, reverse repurchase trans-
11 action, consignment, lease, swap,
12 hedge transaction, deposit, loan, op-
13 tion, allocated transaction, unallocated
14 transaction, or any other similar
15 agreement;

16 “(II) any combination of agree-
17 ments or transactions referred to in
18 subclauses (I) and (III);

19 “(III) any option to enter into
20 any agreement or transaction referred
21 to in subclause (I) or (II);

22 “(IV) a master agreement that
23 provides for an agreement or trans-
24 action referred to in subclauses (I),
25 (II), or (III), together with all supple-

1 ments to any such master agreement,
2 without regard to whether the master
3 agreement provides for an agreement
4 or transaction that is not a forward
5 contract under this clause, except that
6 the master agreement shall be consid-
7 ered to be a forward contract under
8 this clause only with respect to each
9 agreement or transaction under the
10 master agreement that is referred to
11 in subclause (I), (II), or (III); or

12 “(V) any security agreement or
13 arrangement or other credit enhance-
14 ment related to any agreement or
15 transaction referred to in subclause
16 (I), (II), (III), or (IV), including any
17 guarantee or reimbursement obliga-
18 tion in connection with any agreement
19 or transaction referred to in any such
20 subclause.

21 “(v) REPURCHASE AGREEMENT.—The
22 term ‘repurchase agreement’ (including a
23 reverse repurchase agreement)—

24 “(I) means an agreement, includ-
25 ing related terms, which provides for

1 the transfer of one or more certifi-
2 cates of deposit, mortgage-related se-
3 curities (as such term is defined in
4 section 3 of the Securities Exchange
5 Act of 1934), mortgage loans, inter-
6 ests in mortgage-related securities or
7 mortgage loans, eligible bankers' ac-
8 ceptances, qualified foreign govern-
9 ment securities (defined for purposes
10 of this clause as a security that is a
11 direct obligation of, or that is fully
12 guaranteed by, the central government
13 of a member of the Organization for
14 Economic Cooperation and Develop-
15 ment, as determined by regulation or
16 order adopted by the appropriate Fed-
17 eral banking authority), or securities
18 that are direct obligations of, or that
19 are fully guaranteed by, the United
20 States or any agency of the United
21 States against the transfer of funds
22 by the transferee of such certificates
23 of deposit, eligible bankers' accept-
24 ances, securities, mortgage loans, or
25 interests with a simultaneous agree-

1 ment by such transferee to transfer to
2 the transferor thereof certificates of
3 deposit, eligible bankers' acceptances,
4 securities, mortgage loans, or interests
5 as described above, at a date certain
6 not later than 1 year after such trans-
7 fers or on demand, against the trans-
8 fer of funds, or any other similar
9 agreement;

10 “(II) does not include any repur-
11 chase obligation under a participation
12 in a commercial mortgage loan, unless
13 the Agency determines by regulation,
14 resolution, or order to include any
15 such participation within the meaning
16 of such term;

17 “(III) means any combination of
18 agreements or transactions referred to
19 in subclauses (I) and (IV);

20 “(IV) means any option to enter
21 into any agreement or transaction re-
22 ferred to in subclause (I) or (III);

23 “(V) means a master agreement
24 that provides for an agreement or
25 transaction referred to in subclause

1 (I), (III), or (IV), together with all
2 supplements to any such master
3 agreement, without regard to whether
4 the master agreement provides for an
5 agreement or transaction that is not a
6 repurchase agreement under this
7 clause, except that the master agree-
8 ment shall be considered to be a re-
9 purchase agreement under this sub-
10 clause only with respect to each agree-
11 ment or transaction under the master
12 agreement that is referred to in sub-
13 clause (I), (III), or (IV); and

14 “(VI) means any security agree-
15 ment or arrangement or other credit
16 enhancement related to any agree-
17 ment or transaction referred to in
18 subclause (I), (III), (IV), or (V), in-
19 cluding any guarantee or reimburse-
20 ment obligation in connection with
21 any agreement or transaction referred
22 to in any such subclause.

23 “(vi) SWAP AGREEMENT.—The term
24 ‘swap agreement’ means—

1 “(I) any agreement, including the
2 terms and conditions incorporated by
3 reference in any such agreement,
4 which is an interest rate swap, option,
5 future, or forward agreement, includ-
6 ing a rate floor, rate cap, rate collar,
7 cross-currency rate swap, and basis
8 swap; a spot, same day-tomorrow, to-
9 morrow-next, forward, or other for-
10 eign exchange or precious metals
11 agreement; a currency swap, option,
12 future, or forward agreement; an eq-
13 uity index or equity swap, option, fu-
14 ture, or forward agreement; a debt
15 index or debt swap, option, future, or
16 forward agreement; a total return,
17 credit spread or credit swap, option,
18 future, or forward agreement; a com-
19 modity index or commodity swap, op-
20 tion, future, or forward agreement; or
21 a weather swap, weather derivative, or
22 weather option;
23 “(II) any agreement or trans-
24 action that is similar to any other
25 agreement or transaction referred to

1 in this clause and that is of a type
2 that has been, is presently, or in the
3 future becomes, the subject of recur-
4 rent dealings in the swap markets (in-
5 cluding terms and conditions incor-
6 porated by reference in such agree-
7 ment) and that is a forward, swap, fu-
8 ture, or option on one or more rates,
9 currencies, commodities, equity securi-
10 ties or other equity instruments, debt
11 securities or other debt instruments,
12 quantitative measures associated with
13 an occurrence, extent of an occur-
14 rence, or contingency associated with
15 a financial, commercial, or economic
16 consequence, or economic or financial
17 indices or measures of economic or fi-
18 nancial risk or value;

19 “(III) any combination of agree-
20 ments or transactions referred to in
21 this clause;

22 “(IV) any option to enter into
23 any agreement or transaction referred
24 to in this clause;

1 “(V) a master agreement that
2 provides for an agreement or trans-
3 action referred to in subclause (I),
4 (II), (III), or (IV), together with all
5 supplements to any such master
6 agreement, without regard to whether
7 the master agreement contains an
8 agreement or transaction that is not a
9 swap agreement under this clause, ex-
10 cept that the master agreement shall
11 be considered to be a swap agreement
12 under this clause only with respect to
13 each agreement or transaction under
14 the master agreement that is referred
15 to in subclause (I), (II), (III), or (IV);
16 and

17 “(VI) any security agreement or
18 arrangement or other credit enhance-
19 ment related to any agreements or
20 transactions referred to in subclause
21 (I), (II), (III), (IV), or (V), including
22 any guarantee or reimbursement obli-
23 gation in connection with any agree-
24 ment or transaction referred to in any
25 such subclause.

1 “(vii) TREATMENT OF MASTER
2 AGREEMENT AS ONE AGREEMENT.—Any
3 master agreement for any contract or
4 agreement described in any preceding
5 clause of this subparagraph (or any master
6 agreement for such master agreement or
7 agreements), together with all supplements
8 to such master agreement, shall be treated
9 as a single agreement and a single quali-
10 fied financial contract. If a master agree-
11 ment contains provisions relating to agree-
12 ments or transactions that are not them-
13 selves qualified financial contracts, the
14 master agreement shall be deemed to be a
15 qualified financial contract only with re-
16 spect to those transactions that are them-
17 selves qualified financial contracts.

18 “(viii) TRANSFER.—The term ‘trans-
19 fer’ means every mode, direct or indirect,
20 absolute or conditional, voluntary or invol-
21 untary, of disposing of or parting with
22 property or with an interest in property,
23 including retention of title as a security in-
24 terest and foreclosure of the equity of re-
25 demption of the regulated entity.

1 “(E) CERTAIN PROTECTIONS IN EVENT OF
2 APPOINTMENT OF CONSERVATOR.—Notwith-
3 standing any other provision of this section, any
4 other Federal law, or the law of any State
5 (other than paragraph (10) of this subsection
6 and subsection (b)(9)(B)), no person shall be
7 stayed or prohibited from exercising—

8 “(i) any right such person has to
9 cause the termination, liquidation, or accel-
10 eration of any qualified financial contract
11 with a regulated entity in a conservator-
12 ship based upon a default under such fi-
13 nancial contract which is enforceable under
14 applicable noninsolvency law;

15 “(ii) any right under any security
16 agreement or arrangement or other credit
17 enhancement relating to 1 or more such
18 qualified financial contracts; or

19 “(iii) any right to offset or net out
20 any termination values, payment amounts,
21 or other transfer obligations arising under
22 or in connection with such qualified finan-
23 cial contracts.

24 “(F) CLARIFICATION.—No provision of law
25 shall be construed as limiting the right or

1 power of the Agency, or authorizing any court
2 or agency to limit or delay in any manner, the
3 right or power of the Agency to transfer any
4 qualified financial contract in accordance with
5 paragraphs (9) and (10), or to disaffirm or re-
6 pudiate any such contract in accordance with
7 subsection (d)(1).

8 “(G) WALKAWAY CLAUSES NOT EFFEC-
9 TIVE.—

10 “(i) IN GENERAL.—Notwithstanding
11 the provisions of subparagraphs (A) and
12 (E), and sections 403 and 404 of the Fed-
13 eral Deposit Insurance Corporation Im-
14 provement Act of 1991, no walkaway
15 clause shall be enforceable in a qualified fi-
16 nancial contract of a regulated entity in
17 default.

18 “(ii) WALKAWAY CLAUSE DEFINED.—
19 For purposes of this subparagraph, the
20 term ‘walkaway clause’ means a provision
21 in a qualified financial contract that, after
22 calculation of a value of a party’s position
23 or an amount due to or from 1 of the par-
24 ties in accordance with its terms upon ter-
25 mination, liquidation, or acceleration of the

1 qualified financial contract, either does not
2 create a payment obligation of a party or
3 extinguishes a payment obligation of a
4 party in whole or in part solely because of
5 the status of such party as a nondefaulting
6 party.

7 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
8 TRACTS.—In making any transfer of assets or liabil-
9 ities of a regulated entity in default which includes
10 any qualified financial contract, the conservator or
11 receiver for such regulated entity shall either—

12 “(A) transfer to 1 person—

13 “(i) all qualified financial contracts
14 between any person (or any affiliate of
15 such person) and the regulated entity in
16 default;

17 “(ii) all claims of such person (or any
18 affiliate of such person) against such regu-
19 lated entity under any such contract (other
20 than any claim which, under the terms of
21 any such contract, is subordinated to the
22 claims of general unsecured creditors of
23 such regulated entity);

1 “(iii) all claims of such regulated enti-
2 ty against such person (or any affiliate of
3 such person) under any such contract; and

4 “(iv) all property securing, or any
5 other credit enhancement for any contract
6 described in clause (i), or any claim de-
7 scribed in clause (ii) or (iii) under any
8 such contract; or

9 “(B) transfer none of the financial con-
10 tracts, claims, or property referred to under
11 subparagraph (A) (with respect to such person
12 and any affiliate of such person).

13 “(10) NOTIFICATION OF TRANSFER.—

14 “(A) IN GENERAL.—The conservator or re-
15 ceiver shall notify any person that is a party to
16 a contract or transfer by 5:00 p.m. (Eastern
17 Standard Time) on the business day following
18 the date of the appointment of the receiver in
19 the case of a receivership, or the business day
20 following such transfer in the case of a con-
21 servatorship, if—

22 “(i) the conservator or receiver for a
23 regulated entity in default makes any
24 transfer of the assets and liabilities of such
25 regulated entity; and

1 “(ii) such transfer includes any quali-
2 fied financial contract.

3 “(B) CERTAIN RIGHTS NOT ENFORCE-
4 ABLE.—

5 “(i) RECEIVERSHIP.—A person who is
6 a party to a qualified financial contract
7 with a regulated entity may not exercise
8 any right that such person has to termi-
9 nate, liquidate, or net such contract under
10 paragraph (8)(A) of this subsection or
11 under section 403 or 404 of the Federal
12 Deposit Insurance Corporation Improve-
13 ment Act of 1991, solely by reason of or
14 incidental to the appointment of a receiver
15 for the regulated entity (or the insolvency
16 or financial condition of the regulated enti-
17 ty for which the receiver has been ap-
18 pointed)—

19 “(I) until 5:00 p.m. (Eastern
20 Standard Time) on the business day
21 following the date of the appointment
22 of the receiver; or

23 “(II) after the person has re-
24 ceived notice that the contract has

1 been transferred pursuant to para-
2 graph (9)(A).

3 “(ii) CONSERVATORSHIP.—A person
4 who is a party to a qualified financial con-
5 tract with a regulated entity may not exer-
6 cise any right that such person has to ter-
7 minate, liquidate, or net such contract
8 under paragraph (8)(E) of this subsection
9 or under section 403 or 404 of the Federal
10 Deposit Insurance Corporation Improve-
11 ment Act of 1991, solely by reason of or
12 incidental to the appointment of a conser-
13 vator for the regulated entity (or the insol-
14 vency or financial condition of the regu-
15 lated entity for which the conservator has
16 been appointed).

17 “(iii) NOTICE.—For purposes of this
18 paragraph, the conservator or receiver of a
19 regulated entity shall be deemed to have
20 notified a person who is a party to a quali-
21 fied financial contract with such regulated
22 entity, if the conservator or receiver has
23 taken steps reasonably calculated to pro-
24 vide notice to such person by the time
25 specified in subparagraph (A).

1 “(C) BUSINESS DAY DEFINED.—For pur-
2 poses of this paragraph, the term ‘business day’
3 means any day other than any Saturday, Sun-
4 day, or any day on which either the New York
5 Stock Exchange or the Federal Reserve Bank
6 of New York is closed.

7 “(11) DISAFFIRMANCE OR REPUDIATION OF
8 QUALIFIED FINANCIAL CONTRACTS.—In exercising
9 the rights of disaffirmance or repudiation of a con-
10 servator or receiver with respect to any qualified fi-
11 nancial contract to which a regulated entity is a
12 party, the conservator or receiver for such institution
13 shall either—

14 “(A) disaffirm or repudiate all qualified fi-
15 nancial contracts between—

16 “(i) any person or any affiliate of
17 such person; and

18 “(ii) the regulated entity in default; or

19 “(B) disaffirm or repudiate none of the
20 qualified financial contracts referred to in sub-
21 paragraph (A) (with respect to such person or
22 any affiliate of such person).

23 “(12) CERTAIN SECURITY INTERESTS NOT
24 AVOIDABLE.—No provision of this subsection shall
25 be construed as permitting the avoidance of any le-

1 gally enforceable or perfected security interest in any
2 of the assets of any regulated entity, except where
3 such an interest is taken in contemplation of the in-
4 solvency of the regulated entity, or with the intent
5 to hinder, delay, or defraud the regulated entity or
6 the creditors of such regulated entity.

7 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

8 “(A) IN GENERAL.—Notwithstanding any
9 provision of a contract providing for termi-
10 nation, default, acceleration, or exercise of
11 rights upon, or solely by reason of, insolvency
12 or the appointment of, or the exercise of rights
13 or powers by, a conservator or receiver, the con-
14 servator or receiver may enforce any contract,
15 other than a contract for liability insurance for
16 a director or officer, or a contract or a regu-
17 lated entity bond, entered into by the regulated
18 entity.

19 “(B) CERTAIN RIGHTS NOT AFFECTED.—

20 No provision of this paragraph may be con-
21 strued as impairing or affecting any right of the
22 conservator or receiver to enforce or recover
23 under a liability insurance contract for an offi-
24 cer or director, or regulated entity bond under
25 other applicable law.

1 “(C) CONSENT REQUIREMENT.—

2 “(i) IN GENERAL.—Except as other-
3 wise provided under this section, no person
4 may exercise any right or power to termi-
5 nate, accelerate, or declare a default under
6 any contract to which a regulated entity is
7 a party, or to obtain possession of or exer-
8 cise control over any property of the regu-
9 lated entity, or affect any contractual
10 rights of the regulated entity, without the
11 consent of the conservator or receiver, as
12 appropriate, for a period of—

13 “(I) 45 days after the date of ap-
14 pointment of a conservator; or

15 “(II) 90 days after the date of
16 appointment of a receiver.

17 “(ii) EXCEPTIONS.—This subpara-
18 graph shall not—

19 “(I) apply to a contract for liabil-
20 ity insurance for an officer or direc-
21 tor;

22 “(II) apply to the rights of par-
23 ties to certain qualified financial con-
24 tracts under subsection (d)(8); and

1 “(III) be construed as permitting
2 the conservator or receiver to fail to
3 comply with otherwise enforceable
4 provisions of such contracts.

5 “(14) SAVINGS CLAUSE.—The meanings of
6 terms used in this subsection are applicable for pur-
7 poses of this subsection only, and shall not be con-
8 strued or applied so as to challenge or affect the
9 characterization, definition, or treatment of any
10 similar terms under any other statute, regulation, or
11 rule, including the Gramm-Leach-Bliley Act, the
12 Legal Certainty for Bank Products Act of 2000, the
13 securities laws (as that term is defined in section
14 3(a)(47) of the Securities Exchange Act of 1934),
15 and the Commodity Exchange Act.

16 “(15) EXCEPTION FOR FEDERAL RESERVE AND
17 FEDERAL HOME LOAN BANKS.—No provision of this
18 subsection shall apply with respect to—

19 “(A) any extension of credit from any Fed-
20 eral Home Loan Bank or Federal Reserve
21 Bank to any regulated entity; or

22 “(B) any security interest in the assets of
23 the regulated entity securing any such extension
24 of credit.

25 “(e) VALUATION OF CLAIMS IN DEFAULT.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of Federal law or the law of any State, and
3 regardless of the method which the Agency deter-
4 mines to utilize with respect to a regulated entity in
5 default or in danger of default, including trans-
6 actions authorized under subsection (i), this sub-
7 section shall govern the rights of the creditors of
8 such regulated entity.

9 “(2) MAXIMUM LIABILITY.—The maximum li-
10 ability of the Agency, acting as receiver or in any
11 other capacity, to any person having a claim against
12 the receiver or the regulated entity for which such
13 receiver is appointed shall be not more than the
14 amount that such claimant would have received if
15 the Agency had liquidated the assets and liabilities
16 of the regulated entity without exercising the author-
17 ity of the Agency under subsection (i).

18 “(f) LIMITATION ON COURT ACTION.—Except as
19 provided in this section or at the request of the Director,
20 no court may take any action to restrain or affect the exer-
21 cise of powers or functions of the Agency as a conservator
22 or a receiver.

23 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

24 “(1) IN GENERAL.—A director or officer of a
25 regulated entity may be held personally liable for

1 monetary damages in any civil action described in
2 paragraph (2) brought by, on behalf of, or at the re-
3 quest or direction of the Agency, and prosecuted
4 wholly or partially for the benefit of the Agency—

5 “(A) acting as conservator or receiver of
6 such regulated entity; or

7 “(B) acting based upon a suit, claim, or
8 cause of action purchased from, assigned by, or
9 otherwise conveyed by such receiver or conser-
10 vator.

11 “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-
12 plies in any civil action for gross negligence, includ-
13 ing any similar conduct or conduct that dem-
14 onstrates a greater disregard of a duty of care than
15 gross negligence, including intentional tortious con-
16 duct, as such terms are defined and determined
17 under applicable State law.

18 “(3) NO LIMITATION.—Nothing in this sub-
19 section shall impair or affect any right of the Agency
20 under other applicable law.

21 “(h) DAMAGES.—In any proceeding related to any
22 claim against a director, officer, employee, agent, attorney,
23 accountant, appraiser, or any other party employed by or
24 providing services to a regulated entity, recoverable dam-
25 ages determined to result from the improvident or other-

1 wise improper use or investment of any assets of the regu-
2 lated entity shall include principal losses and appropriate
3 interest.

4 “(i) LIMITED-LIFE REGULATED ENTITIES.—

5 “(1) ORGANIZATION.—

6 “(A) PURPOSE.—The Agency, as receiver
7 appointed pursuant to subsection (a)—

8 “(i) may, in the case of a Federal
9 Home Loan Bank, organize a limited-life
10 regulated entity with those powers and at-
11 tributes of the Federal Home Loan Bank
12 in default or in danger of default as the
13 Director determines necessary, subject to
14 the provisions of this subsection, and the
15 Director shall grant a temporary charter to
16 that limited-life regulated entity, and that
17 limited-life regulated entity shall operate
18 subject to that charter; and

19 “(ii) shall, in the case of an enter-
20 prise, organize a limited-life regulated enti-
21 ty with respect to that enterprise in ac-
22 cordance with this subsection.

23 “(B) AUTHORITIES.—Upon the creation of
24 a limited-life regulated entity under subpara-

graph (A), the limited-life regulated entity may—

“(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the regulated entity to the limited-life regulated entity;

“(ii) purchase such assets of the regulated entity that is in default, or in danger of default as the Agency may, in its discretion, determine to be appropriate; and

“(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

“(2) CHARTER AND ESTABLISHMENT.—

“(A) TRANSFER OF CHARTER.—

“(i) FANNIE MAE.—If the Agency is appointed as receiver for the Federal National Mortgage Association, the limited-life regulated entity established under this subsection with respect to such enterprise

1 shall, by operation of law and immediately
2 upon its organization—

3 “(I) succeed to the charter of the
4 Federal National Mortgage Associa-
5 tion, as set forth in the Federal Na-
6 tional Mortgage Association Charter
7 Act; and

8 “(II) thereafter operate in ac-
9 cordance with, and subject to, such
10 charter, this Act, and any other provi-
11 sion of law to which the Federal Na-
12 tional Mortgage Association is subject,
13 except as otherwise provided in this
14 subsection.

15 “(ii) FREDDIE MAC.—If the Agency is
16 appointed as receiver for the Federal
17 Home Loan Mortgage Corporation, the
18 limited-life regulated entity established
19 under this subsection with respect to such
20 enterprise shall, by operation of law and
21 immediately upon its organization—

22 “(I) succeed to the charter of the
23 Federal Home Loan Mortgage Cor-
24 poration, as set forth in the Federal

1 Home Loan Mortgage Corporation
2 Charter Act; and

3 “(II) thereafter operate in ac-
4 cordance with, and subject to, such
5 charter, this Act, and any other provi-
6 sion of law to which the Federal
7 Home Loan Mortgage Corporation is
8 subject, except as otherwise provided
9 in this subsection.

10 “(B) INTERESTS IN AND ASSETS AND OB-
11 LIGATIONS OF REGULATED ENTITY IN DE-
12 FAULT.—Notwithstanding subparagraph (A) or
13 any other provision of law—

14 “(i) a limited-life regulated entity
15 shall assume, acquire, or succeed to the as-
16 sets or liabilities of a regulated entity only
17 to the extent that such assets or liabilities
18 are transferred by the Agency to the lim-
19 ited-life regulated entity in accordance
20 with, and subject to the restrictions set
21 forth in, paragraph (1)(B);

22 “(ii) a limited-life regulated entity
23 shall not assume, acquire, or succeed to
24 any obligation that a regulated entity for
25 which a receiver has been appointed may

1 have to any shareholder of the regulated
2 entity that arises as a result of the status
3 of that person as a shareholder of the reg-
4 ulated entity; and

5 “(iii) no shareholder or creditor of a
6 regulated entity shall have any right or
7 claim against the charter of the regulated
8 entity once the Agency has been appointed
9 receiver for the regulated entity and a lim-
10 ited-life regulated entity succeeds to the
11 charter pursuant to subparagraph (A).

12 “(C) LIMITED-LIFE REGULATED ENTITY
13 TREATED AS BEING IN DEFAULT FOR CERTAIN
14 PURPOSES.—A limited-life regulated entity shall
15 be treated as a regulated entity in default at
16 such times and for such purposes as the Agency
17 may, in its discretion, determine.

18 “(D) MANAGEMENT.—Upon its establish-
19 ment, a limited-life regulated entity shall be
20 under the management of a board of directors
21 consisting of not fewer than 5 nor more than
22 10 members appointed by the Agency.

23 “(E) BYLAWS.—The board of directors of
24 a limited-life regulated entity shall adopt such
25 bylaws as may be approved by the Agency.

1 “(3) CAPITAL STOCK.—

2 “(A) NO AGENCY REQUIREMENT.—

3 The Agency is not required to pay capital
4 stock into a limited-life regulated entity or
5 to issue any capital stock on behalf of a
6 limited-life regulated entity established
7 under this subsection.

8 “(B) AUTHORITY.—If the Director
9 determines that such action is advisable,
10 the Agency may cause capital stock or
11 other securities of a limited-life regulated
12 entity established with respect to an enter-
13 prise to be issued and offered for sale, in
14 such amounts and on such terms and con-
15 ditions as the Director may determine, in
16 the discretion of the Director.

17 “(4) INVESTMENTS.—Funds of a limited-life
18 regulated entity shall be kept on hand in cash, in-
19 vested in obligations of the United States or obliga-
20 tions guaranteed as to principal and interest by the
21 United States, or deposited with the Agency, or any
22 Federal reserve bank.

23 “(5) EXEMPT TAX STATUS.—Notwithstanding
24 any other provision of Federal or State law, a lim-
25 ited-life regulated entity, its franchise, property, and

1 income shall be exempt from all taxation now or
2 hereafter imposed by the United States, by any ter-
3 ritory, dependency, or possession thereof, or by any
4 State, county, municipality, or local taxing authority.

5 “(6) WINDING UP.—

6 “(A) IN GENERAL.—Subject to subpara-
7 graphs (B) and (C), not later than 2 years after
8 the date of its organization, the Agency shall
9 wind up the affairs of a limited-life regulated
10 entity.

11 “(B) EXTENSION.—The Director may, in
12 the discretion of the Director, extend the status
13 of a limited-life regulated entity for 3 additional
14 1-year periods.

15 “(C) TERMINATION OF STATUS AS LIM-
16 ITED-LIFE REGULATED ENTITY.—

17 “(i) IN GENERAL.—Upon the sale by
18 the Agency of 80 percent or more of the
19 capital stock of a limited-life regulated en-
20 tity, as defined in clause (iv), to 1 or more
21 persons (other than the Agency)—

22 “(I) the status of the limited-life
23 regulated entity as such shall termi-
24 nate; and

1 “(II) the entity shall cease to be
2 a limited-life regulated entity for pur-
3 poses of this subsection.

4 “(ii) DIVESTITURE OF REMAINING
5 STOCK, IF ANY.—

6 “(I) IN GENERAL.—Not later
7 than 1 year after the date on which
8 the status of a limited-life regulated
9 entity is terminated pursuant to
10 clause (i), the Agency shall sell to 1 or
11 more persons (other than the Agency)
12 any remaining capital stock of the
13 former limited-life regulated entity.

14 “(II) EXTENSION AUTHOR-
15 IZED.—The Director may extend the
16 period referred to in subclause (I) for
17 not longer than an additional 2 years,
18 if the Director determines that such
19 action would be in the public interest.

20 “(iii) SAVINGS CLAUSE.—Notwith-
21 standing any provision of law, other than
22 clause (ii), the Agency shall not be re-
23 quired to sell the capital stock of an enter-
24 prise or a limited-life regulated entity es-
25 tablished with respect to an enterprise.

1 “(iv) APPLICABILITY.—This subpara-
2 graph applies only with respect to a lim-
3 ited-life regulated entity that is established
4 with respect to an enterprise.

5 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

6 “(A) IN GENERAL.—

7 “(i) TRANSFER OF ASSETS AND LI-
8 ABILITIES.—The Agency, as receiver, may
9 transfer any assets and liabilities of a reg-
10 ulated entity in default, or in danger of de-
11 fault, to the limited-life regulated entity in
12 accordance with and subject to the restric-
13 tions of paragraph (1).

14 “(ii) SUBSEQUENT TRANSFERS.—At
15 any time after the establishment of a lim-
16 ited-life regulated entity, the Agency, as
17 receiver, may transfer any assets and li-
18 abilities of the regulated entity in default,
19 or in danger of default, as the Agency
20 may, in its discretion, determine to be ap-
21 propriate in accordance with and subject to
22 the restrictions of paragraph (1).

23 “(iii) EFFECTIVE WITHOUT AP-
24 PROVAL.—The transfer of any assets or li-
25 abilities of a regulated entity in default or

1 in danger of default to a limited-life regu-
2 lated entity shall be effective without any
3 further approval under Federal or State
4 law, assignment, or consent with respect
5 thereto.

6 “(iv) EQUITABLE TREATMENT OF
7 SIMILARLY SITUATED CREDITORS.—The
8 Agency shall treat all creditors of a regu-
9 lated entity in default or in danger of de-
10 fault that are similarly situated under sub-
11 section (c)(1) in a similar manner in exer-
12 cising the authority of the Agency under
13 this subsection to transfer any assets or li-
14 abilities of the regulated entity to the lim-
15 ited-life regulated entity established with
16 respect to such regulated entity, except
17 that the Agency may take actions (includ-
18 ing making payments) that do not comply
19 with this clause, if—

20 “(I) the Director determines that
21 such actions are necessary to maxi-
22 mize the value of the assets of the
23 regulated entity, to maximize the
24 present value return from the sale or
25 other disposition of the assets of the

1 regulated entity, or to minimize the
2 amount of any loss realized upon the
3 sale or other disposition of the assets
4 of the regulated entity; and

5 “(II) all creditors that are simi-
6 larly situated under subsection (c)(1)
7 receive not less than the amount pro-
8 vided in subsection (e)(2).

9 “(v) LIMITATION ON TRANSFER OF
10 LIABILITIES.—Notwithstanding any other
11 provision of law, the aggregate amount of
12 liabilities of a regulated entity that are
13 transferred to, or assumed by, a limited-
14 life regulated entity may not exceed the ag-
15 gregate amount of assets of the regulated
16 entity that are transferred to, or purchased
17 by, the limited-life regulated entity.

18 “(8) REGULATIONS.—The Agency may promul-
19 gate such regulations as the Agency determines to
20 be necessary or appropriate to implement this sub-
21 section.

22 “(9) POWERS OF LIMITED-LIFE REGULATED
23 ENTITIES.—

24 “(A) IN GENERAL.—Each limited-life regu-
25 lated entity created under this subsection shall

1 have all corporate powers of, and be subject to
2 the same provisions of law as, the regulated en-
3 tity in default or in danger of default to which
4 it relates, except that—

5 “(i) the Agency may—

6 “(I) remove the directors of a
7 limited-life regulated entity;

8 “(II) fix the compensation of
9 members of the board of directors and
10 senior management, as determined by
11 the Agency in its discretion, of a lim-
12 ited-life regulated entity; and

13 “(III) indemnify the representa-
14 tives for purposes of paragraph
15 (1)(B), and the directors, officers, em-
16 ployees, and agents of a limited-life
17 regulated entity on such terms as the
18 Agency determines to be appropriate;
19 and

20 “(ii) the board of directors of a lim-
21 ited-life regulated entity—

22 “(I) shall elect a chairperson who
23 may also serve in the position of chief
24 executive officer, except that such per-
25 son shall not serve either as chair-

1 person or as chief executive officer
2 without the prior approval of the
3 Agency; and

4 “(II) may appoint a chief execu-
5 tive officer who is not also the chair-
6 person, except that such person shall
7 not serve as chief executive officer
8 without the prior approval of the
9 Agency.

10 “(B) STAY OF JUDICIAL ACTION.—Any ju-
11 dicial action to which a limited-life regulated
12 entity becomes a party by virtue of its acquisi-
13 tion of any assets or assumption of any liabil-
14 ities of a regulated entity in default shall be
15 stayed from further proceedings for a period of
16 not longer than 45 days, at the request of the
17 limited-life regulated entity. Such period may
18 be modified upon the consent of all parties.

19 “(10) NO FEDERAL STATUS.—

20 “(A) AGENCY STATUS.—A limited-life reg-
21 ulated entity is not an agency, establishment, or
22 instrumentality of the United States.

23 “(B) EMPLOYEE STATUS.—Representa-
24 tives for purposes of paragraph (1)(B), interim
25 directors, directors, officers, employees, or

1 agents of a limited-life regulated entity are not,
2 solely by virtue of service in any such capacity,
3 officers or employees of the United States. Any
4 employee of the Agency or of any Federal in-
5 strumentality who serves at the request of the
6 Agency as a representative for purposes of
7 paragraph (1)(B), interim director, director, of-
8 ficer, employee, or agent of a limited-life regu-
9 lated entity shall not—

10 “(i) solely by virtue of service in any
11 such capacity lose any existing status as
12 an officer or employee of the United States
13 for purposes of title 5, United States Code,
14 or any other provision of law; or

15 “(ii) receive any salary or benefits for
16 service in any such capacity with respect to
17 a limited-life regulated entity in addition to
18 such salary or benefits as are obtained
19 through employment with the Agency or
20 such Federal instrumentality.

21 “(11) AUTHORITY TO OBTAIN CREDIT.—

22 “(A) IN GENERAL.—A limited-life regu-
23 lated entity may obtain unsecured credit and
24 issue unsecured debt.

1 “(B) INABILITY TO OBTAIN CREDIT.—If a
2 limited-life regulated entity is unable to obtain
3 unsecured credit or issue unsecured debt, the
4 Director may authorize the obtaining of credit
5 or the issuance of debt by the limited-life regu-
6 lated entity—

7 “(i) with priority over any or all of
8 the obligations of the limited-life regulated
9 entity;

10 “(ii) secured by a lien on property of
11 the limited-life regulated entity that is not
12 otherwise subject to a lien; or

13 “(iii) secured by a junior lien on prop-
14 erty of the limited-life regulated entity that
15 is subject to a lien.

16 “(C) LIMITATIONS.—

17 “(i) IN GENERAL.—The Director,
18 after notice and a hearing, may authorize
19 the obtaining of credit or the issuance of
20 debt by a limited-life regulated entity that
21 is secured by a senior or equal lien on
22 property of the limited-life regulated entity
23 that is subject to a lien (other than mort-
24 gages that collateralize the mortgage-

1 backed securities issued or guaranteed by
2 an enterprise) only if—

3 “(I) the limited-life regulated en-
4 tity is unable to otherwise obtain such
5 credit or issue such debt; and

6 “(II) there is adequate protection
7 of the interest of the holder of the lien
8 on the property with respect to which
9 such senior or equal lien is proposed
10 to be granted.

11 “(D) BURDEN OF PROOF.—In any hearing
12 under this subsection, the Director has the bur-
13 den of proof on the issue of adequate protec-
14 tion.

15 “(12) AFFECT ON DEBTS AND LIENS.—The re-
16 versal or modification on appeal of an authorization
17 under this subsection to obtain credit or issue debt,
18 or of a grant under this section of a priority or a
19 lien, does not affect the validity of any debt so
20 issued, or any priority or lien so granted, to an enti-
21 ty that extended such credit in good faith, whether
22 or not such entity knew of the pendency of the ap-
23 peal, unless such authorization and the issuance of
24 such debt, or the granting of such priority or lien,
25 were stayed pending appeal.

1 “(j) OTHER AGENCY EXEMPTIONS.—

2 “(1) APPLICABILITY.—The provisions of this
3 subsection shall apply with respect to the Agency in
4 any case in which the Agency is acting as a conser-
5 vator or a receiver.

6 “(2) TAXATION.—The Agency, including its
7 franchise, its capital, reserves, and surplus, and its
8 income, shall be exempt from all taxation imposed
9 by any State, county, municipality, or local taxing
10 authority, except that any real property of the Agen-
11 cy shall be subject to State, territorial, county, mu-
12 nicipal, or local taxation to the same extent accord-
13 ing to its value as other real property is taxed, ex-
14 cept that, notwithstanding the failure of any person
15 to challenge an assessment under State law of the
16 value of such property, and the tax thereon, shall be
17 determined as of the period for which such tax is im-
18 posed.

19 “(3) PROPERTY PROTECTION.—No property of
20 the Agency shall be subject to levy, attachment, gar-
21 nishment, foreclosure, or sale without the consent of
22 the Agency, nor shall any involuntary lien attach to
23 the property of the Agency.

24 “(4) PENALTIES AND FINES.—The Agency
25 shall not be liable for any amounts in the nature of

1 penalties or fines, including those arising from the
2 failure of any person to pay any real property, per-
3 sonal property, probate, or recording tax or any re-
4 cording or filing fees when due.

5 “(k) PROHIBITION OF CHARTER REVOCATION.—In
6 no case may the receiver appointed pursuant to this sec-
7 tion revoke, annul, or terminate the charter of an enter-
8 prise.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
10 The Federal Housing Enterprises Financial Safety and
11 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
12 ed—

13 (1) in section 1368 (12 U.S.C. 4618)—

14 (A) by striking “an enterprise” each place
15 that term appears and inserting “a regulated
16 entity”; and

17 (B) by striking “the enterprise” each place
18 that term appears and inserting “the regulated
19 entity”;

20 (2) in section 1369C (12 U.S.C. 4622), by
21 striking “enterprise” each place that term appears
22 and inserting “regulated entity”;

23 (3) in section 1369D (12 U.S.C. 4623)—

1 (A) by striking “an enterprise” each place
 2 that term appears and inserting “a regulated
 3 entity”; and

4 (B) in subsection (a)(1), by striking “An
 5 enterprise” and inserting “A regulated entity”;
 6 and

7 (4) by striking sections 1369, 1369A, and
 8 1369B (12 U.S.C. 4619, 4620, and 4621).

9 **Subtitle D—Enforcement Actions**

10 **SEC. 151. CEASE AND DESIST PROCEEDINGS.**

11 Section 1371 of the Federal Housing Enterprises Fi-
 12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 13 4631) is amended—

14 (1) by striking subsections (a) and (b) and in-
 15 serting the following:

16 “(a) ISSUANCE FOR UNSAFE OR UNSOUND PRAC-
 17 TICES AND VIOLATIONS.—

18 “(1) AUTHORITY OF DIRECTOR.—If, in the
 19 opinion of the Director, a regulated entity or any en-
 20 tity-affiliated party is engaging or has engaged, or
 21 the Director has reasonable cause to believe that the
 22 regulated entity or any entity-affiliated party is
 23 about to engage, in an unsafe or unsound practice
 24 in conducting the business of the regulated entity or
 25 the Office of Finance, or is violating or has violated,

1 or the Director has reasonable cause to believe is
2 about to violate, a law, rule, regulation, or order, or
3 any condition imposed in writing by the Director in
4 connection with the granting of any application or
5 other request by the regulated entity or the Office
6 of Finance or any written agreement entered into
7 with the Director, the Director may issue and serve
8 upon the regulated entity or entity-affiliated party a
9 notice of charges in respect thereof.

10 “(2) LIMITATION.—The Director may not, pur-
11 suant to this section, enforce compliance with any
12 housing goal established under subpart B of part 2
13 of subtitle A of this title, with section 1336 of this
14 title, with subsection (m) or (n) of section 309 of the
15 Federal National Mortgage Association Charter Act
16 (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f)
17 of section 307 of the Federal Home Loan Mortgage
18 Corporation Act (12 U.S.C. 1456(e), (f)), or with
19 paragraph (5) of section 10(j) of the Federal Home
20 Loan Bank Act (12 U.S.C. 1430(j)).

21 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
22 regulated entity receives, in its most recent report of ex-
23 amination, a less-than-satisfactory rating for asset quality,
24 management, earnings, or liquidity, the Director may (if
25 the deficiency is not corrected) deem the regulated entity

1 to be engaging in an unsafe or unsound practice for pur-
2 poses of subsection (a).”;

3 (2) in subsection (c)—

4 (A) in paragraph (1), by inserting before
5 the period at the end the following: “, unless
6 the party served with a notice of charges shall
7 appear at the hearing personally or by a duly
8 authorized representative, the party shall be
9 deemed to have consented to the issuance of the
10 cease and desist order”; and

11 (B) in paragraph (2)—

12 (i) by striking “or director” and in-
13 serting “director, or entity-affiliated
14 party”; and

15 (ii) by inserting “or entity-affiliated
16 party” before “consents”;

17 (3) in each of subsections (c), (d), and (e)—

18 (A) by striking “the enterprise” each place
19 that term appears and inserting “the regulated
20 entity”;

21 (B) by striking “an enterprise” each place
22 that term appears and inserting “a regulated
23 entity”; and

24 (C) by striking “conduct” each place that
25 term appears and inserting “practice”;

1 (4) in subsection (d)—

2 (A) in the matter preceding paragraph
3 (1)—

4 (i) by striking “or director” and in-
5 serting “director, or entity-affiliated
6 party”; and

7 (ii) by inserting “to require a regu-
8 lated entity or entity-affiliated party” after
9 “includes the authority”;

10 (B) in paragraph (1)—

11 (i) by striking “to require an executive
12 officer or a director to”; and

13 (ii) by striking “loss” and all that fol-
14 lows through “person” and inserting “loss,
15 if”;

16 (iii) in subparagraph (A), by inserting
17 “such entity or party or finance facility”
18 before “was”; and

19 (iv) by striking subparagraph (B) and
20 inserting the following:

21 “(B) the violation or practice involved a
22 reckless disregard for the law or any applicable
23 regulations or prior order of the Director;”; and

24 (C) in paragraph (4), by inserting “loan
25 or” before “asset”;

1 (5) in subsection (e), by inserting “or entity-af-
2 filiated party”—

3 (A) before “or any executive”; and

4 (B) before the period at the end; and

5 (6) in subsection (f)—

6 (A) by striking “enterprise” and inserting
7 “regulated entity, finance facility,”; and

8 (B) by striking “or director” and inserting
9 “director, or entity-affiliated party”.

10 **SEC. 152. TEMPORARY CEASE AND DESIST PROCEEDINGS.**

11 Section 1372 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4632) is amended—

14 (1) by striking subsection (a) and inserting the
15 following:

16 “(a) **GROUND FOR ISSUANCE.**—

17 “(1) **IN GENERAL.**—If the Director determines
18 that the actions specified in the notice of charges
19 served upon a regulated entity or any entity-affili-
20 ated party pursuant to section 1371(a), or the con-
21 tinuation thereof, is likely to cause insolvency or sig-
22 nificant dissipation of assets or earnings of that en-
23 tity, or is likely to weaken the condition of that enti-
24 ty prior to the completion of the proceedings con-

1 ducted pursuant to sections 1371 and 1373, the Di-
2 rector may—

3 “(A) issue a temporary order requiring
4 that regulated entity or entity-affiliated party to
5 cease and desist from any such violation or
6 practice; and

7 “(B) require that regulated entity or enti-
8 ty-affiliated party to take affirmative action to
9 prevent or remedy such insolvency, dissipation,
10 condition, or prejudice pending completion of
11 such proceedings.

12 “(2) ADDITIONAL REQUIREMENTS.—An order
13 issued under paragraph (1) may include any require-
14 ment authorized under subsection 1371(d).”;

15 (2) in subsection (b)—

16 (A) by striking “or director” and inserting
17 “director, or entity-affiliated party”; and

18 (B) by striking “enterprise” each place
19 that term appears and inserting “regulated en-
20 tity”;

21 (3) in subsection (c), by striking “enterprise”
22 each place that term appears and inserting “regu-
23 lated entity”;

24 (4) in subsection (d)—

1 (A) by striking “or director” each place
 2 that term appears and inserting “director, or
 3 entity-affiliated party”; and

4 (B) by striking “An enterprise” and insert-
 5 ing “A regulated entity”; and

6 (5) in subsection (e)—

7 (A) by striking “request the Attorney Gen-
 8 eral of the United States to”; and

9 (B) by striking “or may, under the direc-
 10 tion and control of the Attorney General, bring
 11 such action”.

12 **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

13 (a) IN GENERAL.—Part 1 of subtitle C of the Federal
 14 Housing Enterprises Financial Safety and Soundness Act
 15 of 1992 (12 U.S.C. 4631 et seq.) is amended—

16 (1) by redesignating sections 1377 through
 17 1379B (12 U.S.C. 4637–4641) as sections 1379
 18 through 1379D, respectively; and

19 (2) by inserting after section 1376 (12 U.S.C.
 20 4636) the following:

21 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

22 **“(a) AUTHORITY TO ISSUE ORDER.—**

23 **“(1) IN GENERAL.—**The Director may serve
 24 upon a party described in paragraph (2), or any offi-
 25 cer, director, or management of the Office of Fi-

1 nance a written notice of the intention of the Direc-
2 tor to suspend or remove such party from office, or
3 prohibit any further participation by such party, in
4 any manner, in the conduct of the affairs of the reg-
5 ulated entity.

6 “(2) APPLICABILITY.—A party described in this
7 paragraph is an entity-affiliated party or any officer,
8 director, or management of the Office of Finance, if
9 the Director determines that—

10 “(A) that party, officer, or director has, di-
11 rectly or indirectly—

12 “(i) violated—

13 “(I) any law or regulation;

14 “(II) any cease and desist order
15 which has become final;

16 “(III) any condition imposed in
17 writing by the Director in connection
18 with the grant of any application or
19 other request by such regulated enti-
20 ty; or

21 “(IV) any written agreement be-
22 tween such regulated entity and the
23 Director;

24 “(ii) engaged or participated in any
25 unsafe or unsound practice in connection

1 with any regulated entity or business insti-
2 tution; or

3 “(iii) committed or engaged in any
4 act, omission, or practice which constitutes
5 a breach of such party’s fiduciary duty;

6 “(B) by reason of the violation, practice, or
7 breach described in subparagraph (A)—

8 “(i) such regulated entity or business
9 institution has suffered or will probably
10 suffer financial loss or other damage; or

11 “(ii) such party has received financial
12 gain or other benefit; and

13 “(C) the violation, practice, or breach de-
14 scribed in subparagraph (A)—

15 “(i) involves personal dishonesty on
16 the part of such party; or

17 “(ii) demonstrates willful or con-
18 tinuing disregard by such party for the
19 safety or soundness of such regulated enti-
20 ty or business institution.

21 “(b) SUSPENSION ORDER.—

22 “(1) SUSPENSION OR PROHIBITION AUTHOR-
23 ITY.—If the Director serves written notice under
24 subsection (a) upon a party subject to that sub-
25 section (a), the Director may, by order, suspend or

1 remove such party from office, or prohibit such
2 party from further participation in any manner in
3 the conduct of the affairs of the regulated entity, if
4 the Director—

5 “(A) determines that such action is nec-
6 essary for the protection of the regulated entity;
7 and

8 “(B) serves such party with written notice
9 of the order.

10 “(2) EFFECTIVE PERIOD.—Any order issued
11 under this subsection—

12 “(A) shall become effective upon service;
13 and

14 “(B) unless a court issues a stay of such
15 order under subsection (g), shall remain in ef-
16 fect and enforceable until—

17 “(i) the date on which the Director
18 dismisses the charges contained in the no-
19 tice served under subsection (a) with re-
20 spect to such party; or

21 “(ii) the effective date of an order
22 issued under subsection (b).

23 “(3) COPY OF ORDER.—If the Director issues
24 an order under subsection (b) to any party, the Di-
25 rector shall serve a copy of such order on any regu-

1 lated entity with which such party is affiliated at the
2 time such order is issued.

3 “(c) NOTICE, HEARING, AND ORDER.—

4 “(1) NOTICE.—A notice under subsection (a) of
5 the intention of the Director to issue an order under
6 this section shall contain a statement of the facts
7 constituting grounds for such action, and shall fix a
8 time and place at which a hearing will be held on
9 such action.

10 “(2) TIMING OF HEARING.—A hearing shall be
11 fixed for a date not earlier than 30 days, nor later
12 than 60 days, after the date of service of notice
13 under subsection (a), unless an earlier or a later
14 date is set by the Director at the request of—

15 “(A) the party receiving such notice, and
16 good cause is shown; or

17 “(B) the Attorney General of the United
18 States.

19 “(3) CONSENT.—Unless the party that is the
20 subject of a notice delivered under subsection (a) ap-
21 pears at the hearing in person or by a duly author-
22 ized representative, such party shall be deemed to
23 have consented to the issuance of an order under
24 this section.

1 “(4) ISSUANCE OF ORDER OF SUSPENSION.—

2 The Director may issue an order under this section,
3 as the Director may deem appropriate, if—

4 “(A) a party is deemed to have consented
5 to the issuance of an order under paragraph
6 (3); or

7 “(B) upon the record made at the hearing,
8 the Director finds that any of the grounds spec-
9 ified in the notice have been established.

10 “(5) EFFECTIVENESS OF ORDER.—Any order
11 issued under paragraph (4) shall become effective at
12 the expiration of 30 days after the date of service
13 upon the relevant regulated entity and party (except
14 in the case of an order issued upon consent under
15 paragraph (3), which shall become effective at the
16 time specified therein). Such order shall remain ef-
17 fective and enforceable except to such extent as it is
18 stayed, modified, terminated, or set aside by action
19 of the Director or a reviewing court.

20 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-
21 TIES.—Any person subject to an order issued under this
22 section shall not—

23 “(1) participate in any manner in the conduct
24 of the affairs of any regulated entity or the Office
25 of Finance;

1 “(2) solicit, procure, transfer, attempt to trans-
2 fer, vote, or attempt to vote any proxy, consent, or
3 authorization with respect to any voting rights in
4 any regulated entity;

5 “(3) violate any voting agreement previously
6 approved by the Director; or

7 “(4) vote for a director, or serve or act as an
8 entity-affiliated party of a regulated entity or as an
9 officer or director of the Office of Finance.

10 “(e) INDUSTRY-WIDE PROHIBITION.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), any person who, pursuant to an order
13 issued under this section, has been removed or sus-
14 pended from office in a regulated entity or the Of-
15 fice of Finance, or prohibited from participating in
16 the conduct of the affairs of a regulated entity or
17 the Office of Finance, may not, while such order is
18 in effect, continue or commence to hold any office in,
19 or participate in any manner in the conduct of the
20 affairs of, any regulated entity or the Office of Fi-
21 nance.

22 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
23 TEN CONSENT.—If, on or after the date on which an
24 order is issued under this section which removes or
25 suspends from office any party, or prohibits such

1 party from participating in the conduct of the affairs
2 of a regulated entity or the Office of Finance, such
3 party receives the written consent of the Director,
4 the order shall, to the extent of such consent, cease
5 to apply to such party with respect to the regulated
6 entity or such Office of Finance described in the
7 written consent. Any such consent shall be publicly
8 disclosed.

9 “(3) VIOLATION OF PARAGRAPH (1) TREATED
10 AS VIOLATION OF ORDER.—Any violation of para-
11 graph (1) by any person who is subject to an order
12 issued under subsection (h) shall be treated as a vio-
13 lation of the order.

14 “(f) APPLICABILITY.—This section shall only apply
15 to a person who is an individual, unless the Director spe-
16 cifically finds that it should apply to a corporation, firm,
17 or other business entity.

18 “(g) STAY OF SUSPENSION AND PROHIBITION OF
19 ENTITY-AFFILIATED PARTY.—Not later than 10 days
20 after the date on which any entity-affiliated party has been
21 suspended from office or prohibited from participation in
22 the conduct of the affairs of a regulated entity under this
23 section, such party may apply to the United States Dis-
24 trict Court for the District of Columbia, or the United
25 States district court for the judicial district in which the

1 headquarters of the regulated entity is located, for a stay
2 of such suspension or prohibition pending the completion
3 of the administrative proceedings pursuant to subsection
4 (c). The court shall have jurisdiction to stay such suspen-
5 sion or prohibition.

6 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-
7 ATED PARTY CHARGED WITH FELONY.—

8 “(1) SUSPENSION OR PROHIBITION.—

9 “(A) IN GENERAL.—Whenever any entity-
10 affiliated party is charged in any information,
11 indictment, or complaint, with the commission
12 of or participation in a crime involving dishon-
13 esty or breach of trust which is punishable by
14 imprisonment for a term exceeding 1 year
15 under Federal or State law, the Director may,
16 if continued service or participation by such
17 party may pose a threat to the regulated entity
18 or impair public confidence in the regulated en-
19 tity, by written notice served upon such party,
20 suspend such party from office or prohibit such
21 party from further participation in any manner
22 in the conduct of the affairs of any regulated
23 entity.

24 “(B) PROVISIONS APPLICABLE TO NO-
25 TICE.—

1 “(i) COPY.—A copy of any notice
2 under subparagraph (A) shall be served
3 upon the relevant regulated entity.

4 “(ii) EFFECTIVE PERIOD.—A suspen-
5 sion or prohibition under subparagraph (A)
6 shall remain in effect until the informa-
7 tion, indictment, or complaint referred to
8 in subparagraph (A) is finally disposed of,
9 or until terminated by the Director.

10 “(2) REMOVAL OR PROHIBITION.—

11 “(A) IN GENERAL.—If a judgment of con-
12 viction or an agreement to enter a pretrial di-
13 version or other similar program is entered
14 against an entity-affiliated party in connection
15 with a crime described in paragraph (1)(A), at
16 such time as such judgment is not subject to
17 further appellate review, the Director may, if
18 continued service or participation by such party
19 may pose a threat to the regulated entity or im-
20 pair public confidence in the regulated entity,
21 issue and serve upon such party an order re-
22 moving such party from office or prohibiting
23 such party from further participation in any
24 manner in the conduct of the affairs of the reg-

1 ulated entity without the prior written consent
2 of the Director.

3 “(B) PROVISIONS APPLICABLE TO
4 ORDER.—

5 “(i) COPY.—A copy of any order
6 under subparagraph (A) shall be served
7 upon the relevant regulated entity, at
8 which time the entity-affiliated party who
9 is subject to the order (if a director or an
10 officer) shall cease to be a director or offi-
11 cer of such regulated entity.

12 “(ii) EFFECT OF ACQUITTAL.—A find-
13 ing of not guilty or other disposition of the
14 charge shall not preclude the Director from
15 instituting proceedings after such finding
16 or disposition to remove a party from of-
17 fice or to prohibit further participation in
18 the affairs of a regulated entity pursuant
19 to subsection (a) or (b).

20 “(iii) EFFECTIVE PERIOD.—Unless
21 terminated by the Director, any notice of
22 suspension or order of removal issued
23 under this subsection shall remain effective
24 and outstanding until the completion of

1 any hearing or appeal authorized under
2 paragraph (4).

3 “(3) AUTHORITY OF REMAINING BOARD MEM-
4 BERS.—

5 “(A) IN GENERAL.—If at any time, be-
6 cause of the suspension of 1 or more directors
7 pursuant to this section, there shall be on the
8 board of directors of a regulated entity less
9 than a quorum of directors not so suspended,
10 all powers and functions vested in or exercisable
11 by such board shall vest in and be exercisable
12 by the director or directors on the board not so
13 suspended, until such time as there shall be a
14 quorum of the board of directors.

15 “(B) APPOINTMENT OF TEMPORARY DI-
16 RECTORS.—If all of the directors of a regulated
17 entity are suspended pursuant to this section,
18 the Director shall appoint persons to serve tem-
19 porarily as directors pending the termination of
20 such suspensions, or until such time as those
21 who have been suspended cease to be directors
22 of the regulated entity and their respective suc-
23 cessors take office.

24 “(4) HEARING REGARDING CONTINUED PAR-
25 TICIPATION.—

1 “(A) IN GENERAL.—Not later than 30
2 days after the date of service of any notice of
3 suspension or order of removal issued pursuant
4 to paragraph (1) or (2), the entity-affiliated
5 party may request in writing an opportunity to
6 appear before the Director to show that the
7 continued service or participation in the con-
8 duct of the affairs of the regulated entity by
9 such party does not, or is not likely to, pose a
10 threat to the interests of the regulated entity,
11 or threaten to impair public confidence in the
12 regulated entity.

13 “(B) TIMING AND FORM OF HEARING.—
14 Upon receipt of a request for a hearing under
15 subparagraph (A), the Director shall fix a time
16 (not later than 30 days after the date of receipt
17 of such request, unless extended at the request
18 of such party) and place at which the entity-af-
19 filiated party may appear, personally or through
20 counsel, before the Director or 1 or more des-
21 ignated employees of the Director to submit
22 written materials (or, at the discretion of the
23 Director, oral testimony) and oral argument.

24 “(C) DETERMINATION.—Not later than 60
25 days after the date of a hearing under subpara-

graph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

“(5) RULES.—The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.”.

(b) CONFORMING AMENDMENTS.—

(1) SAFETY AND SOUNDNESS ACT.—Subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(A) in section 1317(f), by striking “section 1379B” and inserting “section 1379D”;

(B) in section 1373(a)—

1 (i) in paragraph (1), by striking “or
2 1376(c)” and inserting “, 1376(c), or
3 1377”;

4 (ii) in paragraph (2), by inserting “or
5 1377” after “1371”; and

6 (iii) in paragraph (4), by inserting “or
7 removal or prohibition” after “cease and
8 desist”; and

9 (C) in section 1374(a)—

10 (i) by striking “or 1376” and insert-
11 ing “1313B , 1376, or 1377”; and

12 (ii) by striking “such section” and in-
13 serting “this title”.

14 (2) FANNIE MAE CHARTER ACT.—Section
15 308(b) of the Federal National Mortgage Associa-
16 tion Charter Act (12 U.S.C. 1723(b)) is amended in
17 the second sentence, by striking “The” and inserting
18 “Except to the extent that action under section
19 1377 of the Federal Housing Enterprises Financial
20 Safety and Soundness Act of 1992 temporarily re-
21 sults in a lesser number, the”.

22 (3) FREDDIE MAC CHARTER ACT.—Section
23 303(a)(2)(A) of the Federal Home Loan Mortgage
24 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is
25 amended, in the second sentence, by striking “The”

1 and inserting “Except to the extent action under
2 section 1377 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 tempo-
4 rarily results in a lesser number, the”.

5 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

6 Section 1375 of the Federal Housing Enterprises Fi-
7 nancial Safety and Soundness Act of 1992 (12 U.S.C.
8 4635) is amended—

9 (1) by striking subsection (a) and inserting the
10 following new subsection:

11 “(a) ENFORCEMENT.—The Director may, in the dis-
12 cretion of the Director, apply to the United States District
13 Court for the District of Columbia, or the United States
14 district court within the jurisdiction of which the head-
15 quarters of the regulated entity is located, for the enforce-
16 ment of any effective and outstanding notice or order
17 issued under this subtitle or subtitle B, or request that
18 the Attorney General of the United States bring such an
19 action. Such court shall have jurisdiction and power to
20 order and require compliance with such notice or order.”;
21 and

22 (2) in subsection (b), by striking “or 1376” and
23 inserting “1313B, 1376, or 1377”.

1 **SEC. 155. CIVIL MONEY PENALTIES.**

2 Section 1376 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
4 4636) is amended—

5 (1) by striking subsection (a) and inserting the
6 following:

7 “(a) IN GENERAL.—The Director may impose a civil
8 money penalty in accordance with this section on any reg-
9 ulated entity or any entity-affiliated party. The Director
10 shall not impose a civil penalty in accordance with this
11 section on any regulated entity or any entity-affiliated
12 party for any violation that is addressed under section
13 1345(a).”;

14 (2) by striking subsection (b) and inserting the
15 following:

16 “(b) AMOUNT OF PENALTY.—

17 “(1) FIRST TIER.—A regulated entity or entity-
18 affiliated party shall forfeit and pay a civil penalty
19 of not more than \$10,000 for each day during which
20 a violation continues, if such regulated entity or
21 party—

22 “(A) violates any provision of this title, the
23 authorizing statutes, or any order, condition,
24 rule, or regulation under this title or any au-
25 thorizing statute;

1 “(B) violates any final or temporary order
2 or notice issued pursuant to this title;

3 “(C) violates any condition imposed in
4 writing by the Director in connection with the
5 grant of any application or other request by
6 such regulated entity; or

7 “(D) violates any written agreement be-
8 tween the regulated entity and the Director.

9 “(2) SECOND TIER.—Notwithstanding para-
10 graph (1), a regulated entity or entity-affiliated
11 party shall forfeit and pay a civil penalty of not
12 more than \$50,000 for each day during which a vio-
13 lation, practice, or breach continues, if—

14 “(A) the regulated entity or entity-affili-
15 ated party, respectively—

16 “(i) commits any violation described
17 in any subparagraph of paragraph (1);

18 “(ii) recklessly engages in an unsafe
19 or unsound practice in conducting the af-
20 fairs of the regulated entity; or

21 “(iii) breaches any fiduciary duty; and

22 “(B) the violation, practice, or breach—

23 “(i) is part of a pattern of mis-
24 conduct;

1 “(ii) causes or is likely to cause more
2 than a minimal loss to the regulated entity;

3 or

4 “(iii) results in pecuniary gain or
5 other benefit to such party.

6 “(3) THIRD TIER.—Notwithstanding para-
7 graphs (1) and (2), any regulated entity or entity-
8 affiliated party shall forfeit and pay a civil penalty
9 in an amount not to exceed the applicable maximum
10 amount determined under paragraph (4) for each
11 day during which such violation, practice, or breach
12 continues, if such regulated entity or entity-affiliated
13 party—

14 “(A) knowingly—

15 “(i) commits any violation described
16 in any subparagraph of paragraph (1);

17 “(ii) engages in any unsafe or un-
18 sound practice in conducting the affairs of
19 the regulated entity; or

20 “(iii) breaches any fiduciary duty; and

21 “(B) knowingly or recklessly causes a sub-
22 stantial loss to the regulated entity or a sub-
23 stantial pecuniary gain or other benefit to such
24 party by reason of such violation, practice, or
25 breach.

1 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
2 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—
3 The maximum daily amount of any civil penalty
4 which may be assessed pursuant to paragraph (3)
5 for any violation, practice, or breach described in
6 paragraph (3) is—

7 “(A) in the case of any entity-affiliated
8 party, an amount not to exceed \$2,000,000;
9 and

10 “(B) in the case of any regulated entity,
11 \$2,000,000.”;
12 (3) in subsection (c)—

13 (A) by striking “enterprise” each place
14 that term appears and inserting “regulated en-
15 tity”;

16 (B) by inserting “or entity-affiliated
17 party” before “in writing”; and

18 (C) by inserting “or entity-affiliated party”
19 before “has been given”;
20 (4) in subsection (d)—

21 (A) by striking “or director” each place
22 such term appears and inserting “director, or
23 entity-affiliated party”;

24 (B) by striking “an enterprise” and insert-
25 ing “a regulated entity”;

1 (C) by striking “the enterprise” and in-
2 serting “the regulated entity”;

3 (D) by striking “request the Attorney Gen-
4 eral of the United States to”;

5 (E) by inserting “, or the United States
6 district court within the jurisdiction of which
7 the headquarters of the regulated entity is lo-
8 cated,” after “District of Columbia”;

9 (F) by striking “, or may, under the direc-
10 tion and control of the Attorney General of the
11 United States, bring such an action”; and

12 (G) by striking “and section 1374”; and

13 (5) in subsection (g), by striking “An enter-
14 prise” and inserting “A regulated entity”.

15 **SEC. 156. CRIMINAL PENALTY.**

16 (a) IN GENERAL.—Subtitle C of the Federal Housing
17 Enterprises Financial Safety and Soundness Act of 1992
18 (12 U.S.C. 4631 et seq.) is amended by inserting after
19 section 1377, as added by this Act, the following:

20 **“SEC. 1378. CRIMINAL PENALTY.**

21 “Whoever, being subject to an order in effect under
22 section 1377, without the prior written approval of the Di-
23 rector, knowingly participates, directly or indirectly, in any
24 manner (including by engaging in an activity specifically
25 prohibited in such an order) in the conduct of the affairs

1 of any regulated entity shall, notwithstanding section
2 3571 of title 18, be fined not more than \$1,000,000, im-
3 prisoned for not more than 5 years, or both.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
5 The Federal Housing Enterprises Financial Safety and
6 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
7 ed—

8 (1) in section 1379 (as so designated by this
9 Act)—

10 (A) by striking “an enterprise” and insert-
11 ing “a regulated entity”; and

12 (B) by striking “the enterprise” and in-
13 serting “the regulated entity”;

14 (2) in section 1379A (as so designated by this
15 Act), by striking “an enterprise” and inserting “a
16 regulated entity”;

17 (3) in section 1379B(c) (as so designated by
18 this Act), by striking “enterprise” and inserting
19 “regulated entity”; and

20 (4) in section 1379D (as so designated by this
21 Act), by striking “enterprise” and inserting “regu-
22 lated entity”.

1 **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

2 Section 1379 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
4 4637), as so designated by this Act, is amended—

5 (1) by striking “2-year” and inserting “6-year”;

6 (2) by striking “a director or executive officer
7 of an enterprise” and inserting “an entity-affiliated
8 party”;

9 (3) by striking “director or officer” each place
10 that term appears and inserting “entity-affiliated
11 party”; and

12 (4) by striking “enterprise.” and inserting “reg-
13 ulated entity.”.

14 **SEC. 158. SUBPOENA AUTHORITY.**

15 (a) IN GENERAL.—Section 1379B of the Federal
16 Housing Enterprises Financial Safety and Soundness Act
17 of 1992 (12 U.S.C. 4641) is amended—

18 (1) in subsection (a)—

19 (A) in the matter preceding paragraph

20 (1)—

21 (i) by striking “administrative”;

22 (ii) by inserting “, examination, or in-
23 vestigation” after “proceeding”;

24 (iii) by striking “subtitle” and insert-
25 ing “title”; and

1 (iv) by inserting “or any designated
2 representative thereof, including any per-
3 son designated to conduct any hearing
4 under this subtitle” after “Director”; and
5 (B) in paragraph (4), by striking “issued
6 by the Director”;

7 (2) in subsection (b), by inserting “or in any
8 territory or other place subject to the jurisdiction of
9 the United States” after “State”;

10 (3) by striking subsection (c) and inserting the
11 following:

12 “(c) ENFORCEMENT.—

13 “(1) IN GENERAL.—The Director, or any party
14 to proceedings under this subtitle, may apply to the
15 United States District Court for the District of Co-
16 lumbia, or the United States district court for the
17 judicial district of the United States in any territory
18 in which such proceeding is being conducted, or
19 where the witness resides or carries on business, for
20 enforcement of any subpoena or subpoena duces
21 tecum issued pursuant to this section.

22 “(2) POWER OF COURT.—The courts described
23 under paragraph (1) shall have the jurisdiction and
24 power to order and require compliance with any sub-
25 poena issued under paragraph (1).”;

1 (4) in subsection (d), by inserting “enterprise-
2 affiliated party” before “may allow”; and

3 (5) by adding at the end the following:

4 “(e) PENALTIES.—A person shall be guilty of a mis-
5 demeanor, and upon conviction, shall be subject to a fine
6 of not more than \$1,000 or to imprisonment for a term
7 of not more than 1 year, or both, if that person willfully
8 fails or refuses, in disobedience of a subpoena issued under
9 subsection (c), to—

10 “(1) attend court;

11 “(2) testify in court;

12 “(3) answer any lawful inquiry; or

13 “(4) produce books, papers, correspondence,
14 contracts, agreements, or such other records as re-
15 quested in the subpoena.”.

16 **Subtitle E—General Provisions**

17 **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

18 (a) AMENDMENTS TO 1992 ACT.—The Federal
19 Housing Enterprises Financial Safety and Soundness Act
20 of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,
21 is amended—

22 (1) in section 1315 (12 U.S.C. 4515)—

23 (A) in subsection (a)—

24 (i) by striking “(a) OFFICE PER-
25 SONNEL.—The” and inserting “(a) IN

1 GENERAL.—Subject to title III of the Fed-
2 eral Housing Finance Regulatory Reform
3 Act of 2008, the”; and

4 (ii) by striking “the Office” each place
5 that term appears and inserting “the
6 Agency”;

7 (B) in subsection (c), by striking “the Of-
8 fice” and inserting “the Agency”;

9 (C) in subsection (e), by striking “the Of-
10 fice” and inserting “the Agency”;

11 (D) by striking subsection (d) and redesign-
12 ating subsection (e) as subsection (d); and

13 (E) by striking subsection (f);

14 (2) in section 1319A (12 U.S.C. 4520)—

15 (A) by striking “(a) IN GENERAL.—”; and

16 (B) by striking subsection (b);

17 (3) in section 1364(c) (12 U.S.C. 4614(c)), by
18 striking the last sentence;

19 (4) by striking section 1383 (12 U.S.C. 1451
20 note);

21 (5) in each of sections 1319D, 1319E, and
22 1319F (12 U.S.C. 4523, 4524, 4525) by striking
23 “the Office” each place that term appears and in-
24 serting “the Agency”; and

1 (6) in each of sections 1319B and 1369(a)(3)
 2 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-
 3 mittee on Banking, Finance and Urban Affairs”
 4 each place such term appears and inserting “Com-
 5 mittee on Financial Services”.

6 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
 7 The Federal National Mortgage Association Charter Act
 8 (12 U.S.C. 1716 et seq.) is amended—

9 (1) in each of sections 303(c)(2) (12 U.S.C.
 10 1718(c)(2)), 309(d)(3)(B) (12 U.S.C.
 11 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.
 12 1723a(k)(1)), by striking “Director of the Office of
 13 Federal Housing Enterprise Oversight of the De-
 14 partment of Housing and Urban Development” each
 15 place that term appears, and inserting “Director of
 16 the Federal Housing Finance Agency”; and

17 (2) in section 309—

18 (A) in subsection (m) (12 U.S.C.
 19 1723a(m))—

20 (i) in paragraph (1), by striking “to
 21 the Secretary, in a form determined by the
 22 Secretary” and inserting “to the Director
 23 of the Federal Housing Finance Agency, in
 24 a form determined by the Director”; and

1 (ii) in paragraph (2), by striking “to
 2 the Secretary, in a form determined by the
 3 Secretary” and inserting “to the Director
 4 of the Federal Housing Finance Agency, in
 5 a form determined by the Director”;

6 (B) in subsection (n) (12 U.S.C.
 7 1723a(n))—

8 (i) in paragraph (1), by striking “and
 9 the Secretary” and inserting “and the Di-
 10 rector of the Federal Housing Finance
 11 Agency”; and

12 (ii) in paragraph (2), by striking
 13 “Secretary” each place that term appears
 14 and inserting “Director of the Federal
 15 Housing Finance Agency”; and

16 (C) in paragraph (3)(B), by striking “Sec-
 17 retary” and inserting “Director of the Federal
 18 Housing Finance Agency”.

19 (c) AMENDMENTS TO FREDDIE MAC CHARTER
 20 ACT.—The Federal Home Loan Mortgage Corporation
 21 Act (12 U.S.C. 1451 et seq.) is amended—

22 (1) in each of sections 303(b)(2) (12 U.S.C.
 23 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and
 24 section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-
 25 ing “Director of the Office of Federal Housing En-

1 terprise Oversight of the Department of Housing
2 and Urban Development” each place that term ap-
3 pears, and inserting “Director of the Federal Hous-
4 ing Finance Agency”;

5 (2) in section 306 (12 U.S.C. 1455)—

6 (A) in subsection (c)(2), by inserting “the”
7 after “Secretary of”;

8 (B) in subsection (i)—

9 (i) by striking “section 1316(c)” and
10 inserting “section 306(c)”; and

11 (ii) by striking “section 106” and in-
12 serting “section 1316”; and

13 (C) in subsection (j)(2), by striking “of
14 substantially” and inserting “or substantially”;
15 and

16 (3) in section 307 (12 U.S.C. 1456)—

17 (A) in subsection (e)—

18 (i) in paragraph (1), by striking “to
19 the Secretary, in a form determined by the
20 Secretary” and inserting “to the Director
21 of the Federal Housing Finance Agency, in
22 a form determined by the Director”; and

23 (ii) in paragraph (2), by striking “to
24 the Secretary, in a form determined by the
25 Secretary” and inserting “to the Director

1 of the Federal Housing Finance Agency, in
2 a form determined by the Director”; and
3 (B) in subsection (f)—

4 (i) in paragraph (1), by striking “and
5 the Secretary” and inserting “and the Di-
6 rector of the Federal Housing Finance
7 Agency”;

8 (ii) in paragraph (2), by striking “the
9 Secretary” each place that term appears
10 and inserting “the Director of the Federal
11 Housing Finance Agency”; and

12 (iii) in paragraph (3)(B), by striking
13 “Secretary” and inserting “Director of the
14 Federal Housing Finance Agency”.

15 (d) AMENDMENT TO TITLE 18, UNITED STATES
16 CODE.—Section 1905 of title 18, United States Code, is
17 amended by striking “Office of Federal Housing Enter-
18 prise Oversight” and inserting “Federal Housing Finance
19 Agency”.

20 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION
21 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-
22 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))
23 is amended by striking “Director of the Office of Federal
24 Housing Enterprise Oversight of the Department of Hous-

1 ing and Urban Development” and inserting “Director of
2 the Federal Housing Finance Agency”.

3 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND
4 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-
5 ment of Housing and Urban Development Act (42 U.S.C.
6 3534) is amended by striking subsection (d).

7 (g) AMENDMENTS TO TITLE 5, UNITED STATES
8 CODE.—Title 5, United States Code, is amended—

9 (1) in section 5313, by striking the item relat-
10 ing to the Director of the Office of Federal Housing
11 Enterprise Oversight, Department of Housing and
12 Urban Development and inserting the following new
13 item:

14 “Director of the Federal Housing Finance
15 Agency.”; and

16 (2) in section 3132(a)(1)—

17 (A) in subparagraph (B), by striking “,,
18 and” and inserting “, and”;

19 (B) in subparagraph (D)—

20 (i) by striking “the Federal Housing
21 Finance Board”;

22 (ii) by striking “the Office of Federal
23 Housing Enterprise Oversight of the De-
24 partment of Housing and Urban Develop-

1 ment” and inserting “the Federal Housing
2 Finance Agency”; and

3 (iii) by striking “or or” at the end;

4 (C) in subparagraph (E), as added by sec-
5 tion 8(d)(1)(B)(iii) of Public Law 107–123, by
6 adding “or” at the end; and

7 (D) by redesignating subparagraph (E), as
8 added by section 10702(e)(1)(C) of Public Law
9 107–171, as subparagraph (F).

10 (h) AMENDMENT TO SARBANES-OXLEY ACT.—Sec-
11 tion 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of
12 2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by in-
13 serting “and the Director of the Federal Housing Finance
14 Agency,” after “Commission,”.

15 (i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE
16 ACT.—Section 11(t)(2)(A) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding
18 at the end the following:

19 “(vii) Federal Housing Finance Agen-
20 cy.”.

21 **SEC. 162. PRESIDENTIALLY-APPOINTED DIRECTORS OF EN-**
22 **TERPRISES.**

23 (a) FANNIE MAE.—

1 (1) IN GENERAL.—Section 308(b) of the Fed-
2 eral National Mortgage Association Charter Act (12
3 U.S.C. 1723(b)) is amended—

4 (A) in the first sentence, by striking
5 “eighteen persons, five of whom shall be ap-
6 pointed annually by the President of the United
7 States, and the remainder of whom” and insert-
8 ing “13 persons, or such other number that the
9 Director determines appropriate, who”;

10 (B) in the second sentence, by striking
11 “appointed by the President”;

12 (C) in the third sentence—

13 (i) by striking “appointed or”; and

14 (ii) by striking “, except that any
15 such appointed member may be removed
16 from office by the President for good
17 cause”;

18 (D) in the fourth sentence, by striking
19 “elective”; and

20 (E) by striking the fifth sentence.

21 (2) TRANSITIONAL PROVISION.—The amend-
22 ments made by paragraph (1) shall not apply to any
23 appointed position of the board of directors of the
24 Federal National Mortgage Association until the ex-

1 piration of the annual term for such position during
2 which the effective date under section 163 occurs.

3 (b) FREDDIE MAC.—

4 (1) IN GENERAL.—Section 303(a)(2) of the
5 Federal Home Loan Mortgage Corporation Act (12
6 U.S.C. 1452(a)(2)) is amended—

7 (A) in subparagraph (A)—

8 (i) in the first sentence, by striking
9 “18 persons, 5 of whom shall be appointed
10 annually by the President of the United
11 States and the remainder of whom” and
12 inserting “13 persons, or such other num-
13 ber as the Director determines appropriate,
14 who”; and

15 (ii) in the second sentence, by striking
16 “appointed by the President of the United
17 States”;

18 (B) in subparagraph (B)—

19 (i) by striking “such or”; and

20 (ii) by striking “, except that any ap-
21 pointed member may be removed from of-
22 fice by the President for good cause”; and

23 (C) in subparagraph (C)—

24 (i) by striking the first sentence; and

25 (ii) by striking “elective”.

1 (2) TRANSITIONAL PROVISION.—The amend-
 2 ments made by paragraph (1) shall not apply to any
 3 appointed position of the board of directors of the
 4 Federal Home Loan Mortgage Corporation until the
 5 expiration of the annual term for such position dur-
 6 ing which the effective date under section 163 oc-
 7 curs.

8 **SEC. 163. EFFECTIVE DATE.**

9 Except as otherwise specifically provided in this title,
 10 this title and the amendments made by this title shall take
 11 effect on, and shall apply beginning on, the date of enact-
 12 ment of this Act.

13 **TITLE II—FEDERAL HOME LOAN**
 14 **BANKS**

15 **SEC. 201. RECOGNITION OF DISTINCTIONS BETWEEN THE**
 16 **ENTERPRISES AND THE FEDERAL HOME**
 17 **LOAN BANKS.**

18 Section 1313 of the Federal Housing Enterprises Fi-
 19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 20 4513) is amended by adding at the end the following:

21 “(f) RECOGNITION OF DISTINCTIONS BETWEEN THE
 22 ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—
 23 Prior to promulgating any regulation or taking any other
 24 formal or informal agency action of general applicability
 25 relating to the Federal Home Loan Banks, including the

1 issuance of an advisory document or examination guid-
 2 ance, the Director shall consider the differences between
 3 the Federal Home Loan Banks and the enterprises with
 4 respect to—

5 “(1) the Banks’—

6 “(A) cooperative ownership structure;

7 “(B) the mission of providing liquidity to
 8 members;

9 “(C) affordable housing and community
 10 development mission;

11 “(D) capital structure; and

12 “(E) joint and several liability; and

13 “(2) any other differences that the Director
 14 considers appropriate.”.

15 **SEC. 202. DIRECTORS.**

16 Section 7 of the Federal Home Loan Bank Act (12
 17 U.S.C. 1427) is amended—

18 (1) by striking subsection (a) and inserting the
 19 following:

20 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
 21 Flicts OF INTEREST.—

22 “(1) IN GENERAL.—Subject to paragraphs (2)
 23 through (4), the management of each Federal Home
 24 Loan Bank shall be vested in a board of 13 direc-

tors, or such other number as the Director determines appropriate.

“(2) BOARD MAKEUP.—The board of directors of each Bank shall be comprised of—

“(A) member directors, who shall comprise at least the majority of the members of the board of directors; and

“(B) independent directors, who shall comprise not fewer than $\frac{2}{5}$ of the members of the board of directors.

“(3) SELECTION CRITERIA.—

“(A) IN GENERAL.—Each member of the board of directors shall be—

“(i) elected by plurality vote of the members, in accordance with procedures established under this section; and

“(ii) a citizen of the United States.

“(B) INDEPENDENT DIRECTOR CRITERIA.—

“(i) IN GENERAL.—Each independent director that is not a public interest director under clause (ii) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, de-

1 ratives, project development, or organiza-
2 tional management, or such other knowl-
3 edge or expertise as the Director may pro-
4 vide by regulation.

5 “(ii) PUBLIC INTEREST.—Not fewer
6 than 2 of the independent directors shall
7 have more than 4 years of experience in
8 representing consumer or community inter-
9 ests on banking services, credit needs,
10 housing, or financial consumer protections.

11 “(iii) CONFLICTS OF INTEREST.—No
12 independent director may, during the term
13 of service on the board of directors, serve
14 as an officer of any Federal Home Loan
15 Bank or as a director, officer, or employee
16 of any member of a Bank, or of any person
17 that receives advances from a Bank.

18 “(4) DEFINITIONS.—For purposes of this sec-
19 tion, the following definitions shall apply:

20 “(A) INDEPENDENT DIRECTOR.—The
21 terms ‘independent director’ and ‘independent
22 directorship’ mean a member of the board of di-
23 rectors of a Federal Home Loan Bank who is
24 a bona fide resident of the district in which the

1 Federal Home Loan Bank is located, or the di-
 2 rectorship held by such a person, respectively.

3 “(B) MEMBER DIRECTOR.—The terms
 4 ‘member director’ and ‘member directorship’
 5 mean a member of the board of directors of a
 6 Federal Home Loan Bank who is an officer or
 7 director of a member institution that is located
 8 in the district in which the Federal Home Loan
 9 Bank is located, or the directorship held by
 10 such a person, respectively.”;

11 (2) by striking “elective” each place that term
 12 appears, other than in subsections (d), (e), and (f),
 13 and inserting “member”;

14 (3) in subsection (b)—

15 (A) by striking the subsection heading and
 16 all that follows through “Each elective director-
 17 ship” and inserting the following:

18 “(b) DIRECTORSHIPS.—

19 “(1) MEMBER DIRECTORSHIPS.—Each member
 20 directorship”; and

21 (B) by adding at the end the following:

22 “(2) INDEPENDENT DIRECTORSHIPS.—

23 “(A) ELECTIONS.—Each independent di-
 24 rector—

1 “(i) shall be elected by the members
2 entitled to vote, from among eligible per-
3 sons nominated, after consultation with the
4 Advisory Council of the Bank, by the
5 board of directors of the Bank; and

6 “(ii) shall be elected by a plurality of
7 the votes of the members of the Bank at
8 large, with each member having the num-
9 ber of votes for each such directorship as
10 it has under paragraph (1) in an election
11 to fill member directorships.

12 “(B) CRITERIA.—Nominees shall meet all
13 applicable requirements prescribed in this sec-
14 tion.

15 “(C) NOMINATION AND ELECTION PROCE-
16 DURES.—Procedures for nomination and elec-
17 tion of independent directors shall be prescribed
18 by the bylaws of each Federal Home Loan
19 Bank, in a manner consistent with the rules
20 and regulations of the Agency.”;

21 (4) in subsection (c)—

22 (A) by striking “elective” each place that
23 term appears and inserting “member”, ex-
24 cept—

1 (i) in the second sentence, the second
2 place that term appears; and

3 (ii) each place that term appears in
4 the fifth sentence; and

5 (B) in the second sentence—

6 (i) by inserting “(A) except as pro-
7 vided in clause (B) of this sentence,” be-
8 fore “if at any time”; and

9 (ii) by inserting before the period at
10 the end the following: “, and (B) clause
11 (A) of this sentence shall not apply to the
12 directorships of any Federal Home Loan
13 Bank resulting from the merger of any 2
14 or more such Banks”;

15 (5) in subsection (d)—

16 (A) in the first sentence—

17 (i) by striking “, whether elected or
18 appointed,”; and

19 (ii) by striking “3 years” and insert-
20 ing “4 years”;

21 (B) in the second sentence—

22 (i) by striking “Federal Home Loan
23 Bank System Modernization Act of 1999”
24 and inserting “Federal Housing Finance
25 Regulatory Reform Act of 2008”;

1 (ii) by striking “ $\frac{1}{3}$ ” and inserting
2 “ $\frac{1}{4}$ ”; and

3 (iii) by striking “or appointed”; and
4 (C) in the third sentence—

5 (i) by striking “an elective” each place
6 that term appears and inserting “a”; and

7 (ii) by striking “in any elective direc-
8 torship or elective directorships”;

9 (6) in subsection (f)—

10 (A) by striking paragraph (2);

11 (B) by striking “appointed or” each place
12 that term appears; and

13 (C) in paragraph (3)—

14 (i) by striking “(3) ELECTED BANK
15 DIRECTORS.—” and inserting “(2) ELEC-
16 TION PROCESS.—”; and

17 (ii) by striking “elective” each place
18 that term appears;

19 (7) in subsection (i)—

20 (A) in paragraph (1), by striking “Subject
21 to paragraph (2), each” and inserting “Each”;
22 and

23 (B) by striking paragraph (2) and insert-
24 ing the following:

1 “(2) ANNUAL REPORT.—The Director shall in-
 2 clude, in the annual report submitted to the Con-
 3 gress pursuant to section 1319B of the Federal
 4 Housing Enterprises Financial Safety and Sound-
 5 ness Act of 1992, information regarding the com-
 6 pensation and expenses paid by the Federal Home
 7 Loan Banks to the directors on the boards of direc-
 8 tors of the Banks.”; and

9 (8) by adding at the end the following:

10 “(1) TRANSITION RULE.—Any member of the board
 11 of directors of a Bank elected or appointed in accordance
 12 with this section prior to the date of enactment of this
 13 subsection may continue to serve as a member of that
 14 board of directors for the remainder of the existing term
 15 of service.”.

16 **SEC. 203. DEFINITIONS.**

17 Section 2 of the Federal Home Loan Bank Act (12
 18 U.S.C. 1422) is amended—

19 (1) by striking paragraphs (1), (10), and (11);

20 (2) by redesignating paragraphs (2) through
 21 (9) as paragraphs (1) through (8), respectively;

22 (3) by redesignating paragraphs (12) and (13)
 23 as paragraphs (9) and (10), respectively; and

24 (4) by adding at the end the following:

1 “(11) DIRECTOR.—The term ‘Director’ means
2 the Director of the Federal Housing Finance Agen-
3 cy.

4 “(12) AGENCY.—The term ‘Agency’ means the
5 Federal Housing Finance Agency, established under
6 section 1311 of the Federal Housing Enterprises Fi-
7 nancial Safety and Soundness Act of 1992.”.

8 **SEC. 204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**
9 **BANKS.**

10 The Federal Home Loan Bank Act (12 U.S.C. 1421
11 et seq.), other than in provisions of that Act added or
12 amended otherwise by this Act, is amended—

13 (1) by striking sections 2A and 2B (12 U.S.C.
14 1422a, 1422b);

15 (2) by striking section 18 (12 U.S.C. 1438) and
16 inserting the following:

17 **“SEC. 18. ADMINISTRATIVE PROVISIONS.**

18 “(a) ACQUISITION AUTHORITY.—The Director of the
19 Office of Thrift Supervision, utilizing the services of the
20 Administrator of General Services (hereinafter referred to
21 as the ‘Administrator’), and subject to any limitation here-
22 on which may hereafter be imposed in appropriation Acts,
23 is hereby authorized—

1 “(1) to acquire, in the name of the United
2 States, real property in the District of Columbia, for
3 the purposes set forth in this section;

4 “(2) to construct, develop, furnish, and equip
5 such buildings thereon and such facilities as in its
6 judgment may be appropriate to provide, to such ex-
7 tent as the Director of the Office of Thrift Super-
8 vision may deem advisable, suitable and adequate
9 quarters and facilities for the Director of the Office
10 of Thrift Supervision and the agencies under its ad-
11 ministration or supervision;

12 “(3) to enlarge, remodel, or reconstruct any of
13 the same; and

14 “(4) to make or enter into contracts for any of
15 the foregoing.

16 “(b) ADVANCES.—The Director of the Office of
17 Thrift Supervision may require of the respective banks,
18 and they shall make to the Director of the Office of Thrift
19 Supervision, such advances of funds for the purposes set
20 out in subsection (a) as in the sole judgment of the Direc-
21 tor of the Office of Thrift Supervision may from time to
22 time be advisable. Such advances shall be apportioned by
23 the Director of the Office of Thrift Supervision among the
24 banks in proportion to the total assets of the respective
25 banks, determined in such manner and as of such times

1 as the Director of the Office of Thrift Supervision may
2 prescribe. Each such advance shall bear interest at the
3 rate of 4½ per centum per annum from the date of the
4 advance and shall be repaid by the Director of the Office
5 of Thrift Supervision in such installments and over such
6 period, not longer than twenty-five years from the making
7 of the advance, as the Director of the Office of Thrift Su-
8 pervision may determine. Payments of interest and prin-
9 cipal upon such advances shall be made from receipts of
10 the Director of the Office of Thrift Supervision or from
11 other sources which may from time to time be available
12 to the Director of the Office of Thrift Supervision. The
13 obligation of the Director of the Office of Thrift Super-
14 vision to make any such payment shall not be regarded
15 as an obligation of the United States. To such extent as
16 the Director of the Office of Thrift Supervision may pre-
17 scribe any such obligation shall be regarded as a legal in-
18 vestment for the purposes of subsections (g) and (h) of
19 section 11 and for the purposes of section 16.

20 “(c) PLANS AND DESIGNS.—The plans and designs
21 for such buildings and facilities and for any such enlarge-
22 ment, remodeling, or reconstruction shall, to such extent
23 as the chairperson of the Director of the Office of Thrift
24 Supervision may request, be subject to the approval of the
25 Director.

1 “(d) CUSTODY, MANAGEMENT AND CONTROL.—
2 Upon the making of arrangements mutually agreeable to
3 the Director of the Office of Thrift Supervision and the
4 Administrator, which arrangements may be modified from
5 time to time by mutual agreement between them and may
6 include but shall not be limited to the making of payments
7 by the Director of the Office of Thrift Supervision and
8 such agencies to the Administrator and by the Adminis-
9 trator to the Director of the Office of Thrift Supervision,
10 the custody, management, and control of such buildings
11 and facilities and of such real property shall be vested in
12 the Administrator in accordance therewith. Until the mak-
13 ing of such arrangements, such custody, management, and
14 control, including the assignment and allotment and the
15 reassignment and reallocation of building and other space,
16 shall be vested in the Director of the Office of Thrift Su-
17 pervision.

18 “(e) PROCEEDS.—Any proceeds (including advances)
19 received by the Director of the Office of Thrift Supervision
20 in connection with this subsection, and any proceeds from
21 the sale or other disposition of real or other property ac-
22 quired by the Director of the Office of Thrift Supervision
23 under this section, shall be considered as receipts of the
24 Director of the Office of Thrift Supervision, and obliga-
25 tions and expenditures of the Director of the Office of

1 Thrift Supervision and such agencies in connection with
2 this section shall not be considered as administrative ex-
3 penses. As used in this section, the term ‘property’ shall
4 include interests in property.

5 “(f) BUDGET PROGRAM.—

6 “(1) IN GENERAL.—With respect to its func-
7 tions under this section, the Director of the Office
8 of Thrift Supervision shall—

9 “(A) annually prepare and submit a budg-
10 et program as provided in title I of the Govern-
11 ment Corporation Control Act with regard to
12 wholly owned Government corporations, and for
13 purposes of this paragraph, the terms ‘wholly
14 owned Government corporations’ and ‘Govern-
15 ment corporations’, wherever used in such title,
16 shall include the Director of the Office of Thrift
17 Supervision; and

18 “(B) maintain an integral set of accounts
19 which shall be audited by the General Account-
20 ing Office in accordance with the principles and
21 procedures applicable to commercial corporate
22 transactions, as provided in such title, and no
23 other settlement or adjustment shall be re-
24 quired with respect to transactions under this
25 section or with respect to claims, demands, or

1 accounts by or against any person arising there-
2 under.

3 “(2) MISCELLANEOUS PROVISIONS.—The first
4 budget program shall be for the first full fiscal year
5 beginning on or after the date of enactment of this
6 subsection. Except as otherwise provided in this sec-
7 tion or by the Director of the Office of Thrift Super-
8 vision, the provisions of this section and the func-
9 tions thereby or thereunder subsisting shall be appli-
10 cable and exercisable notwithstanding and without
11 regard to the Act of June 20, 1938 (D.C. Code,
12 secs. 5–413—5–428), except that the proviso of sec-
13 tion 16 thereof shall apply to any building con-
14 structed under this section, and section 306 of the
15 Act of July 30, 1947 (61 Stat. 584), or any other
16 provision of law relating to the construction, alter-
17 ation, repair, or furnishing of public or other build-
18 ings or structures or the obtaining of sites therefor,
19 but any person or body in whom any such function
20 is vested may provide for delegation or redelegation
21 of the exercise of such function.

22 “(g) LIMITATION.—No obligation shall be incurred
23 and no expenditure, except in liquidation of obligation,
24 shall be made pursuant to paragraphs (1) and (2) of sub-
25 section (a), if the total amount of all obligations incurred

1 pursuant thereto would thereupon exceed \$13,200,000, or
2 such greater amount as may be provided in an appropria-
3 tions Act or other law.”.

4 (3) in section 11 (12 U.S.C. 1431)—

5 (A) in subsection (b)—

6 (i) in the first sentence—

7 (I) by striking “The Board” and
8 inserting “The Office of Finance, as
9 agent for the Banks,”; and

10 (II) by striking “the Board” and
11 inserting “such Office”; and

12 (ii) in the second and fourth sen-
13 tences, by striking “the Board” each place
14 such term appears and inserting “the Of-
15 fice of Finance”;

16 (B) in subsection (c)—

17 (i) by striking “the Board” the first
18 place such term appears and inserting “the
19 Office of Finance, as agent for the
20 Banks,”; and

21 (ii) by striking “the Board” the sec-
22 ond place such term appears and inserting
23 “such Office”; and

24 (C) in subsection (f)—

1 (i) by striking the 2 commas after
2 “permit” and inserting “or”; and

3 (ii) by striking the comma after “re-
4 quire”;

5 (4) in section 6 (12 U.S.C. 1426)—

6 (A) in subsection (b)(1), in the matter pre-
7 ceding subparagraph (A), by striking “Finance
8 Board approval” and inserting “approval by the
9 Director”; and

10 (B) in each of subsections (c)(4)(B) and
11 (d)(2), by striking “Finance Board regulations”
12 each place that term appears and inserting
13 “regulations of the Director”;

14 (5) in section 10(b) (12 U.S.C. 1430(b))—

15 (A) in the subsection heading, by striking
16 “FORMAL BOARD RESOLUTION” and inserting
17 “APPROVAL OF DIRECTOR”; and

18 (B) by striking “by formal resolution”;

19 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),
20 by striking “Chairperson of the Federal Housing Fi-
21 nance Board” and inserting “Director”;

22 (7) in section 15 (12 U.S.C. 1435), by inserting
23 “or the Director” after “the Board”;

24 (8) by striking “the Board” each place that
25 term appears and inserting “the Director”;

1 (9) by striking “The Board” each place that
2 term appears and inserting “The Director”;

3 (10) by striking “the Finance Board” each
4 place that term appears and inserting “the Direc-
5 tor”;

6 (11) by striking “The Finance Board” each
7 place that term appears and inserting “The Direc-
8 tor”; and

9 (12) by striking “Federal Housing Finance
10 Board” each place that term appears and inserting
11 “Director”.

12 **SEC. 205. HOUSING GOALS.**

13 The Federal Home Loan Bank Act (12 U.S.C. 1421
14 et seq.) is amended by inserting after section 10b the fol-
15 lowing new section:

16 **“SEC. 10C. HOUSING GOALS.**

17 “(a) IN GENERAL.—The Director shall establish
18 housing goals with respect to the purchase of mortgages,
19 if any, by the Federal Home Loan Banks. Such goals shall
20 be consistent with the goals established under sections
21 1331 through 1334 of the Federal Housing Enterprises
22 Financial Safety and Soundness Act of 1992.

23 “(b) CONSIDERATIONS.—In establishing the goals re-
24 quired by subsection (a), the Director shall consider the

1 unique mission and ownership structure of the Federal
2 Home Loan Banks.

3 “(c) TRANSITION PERIOD.—To facilitate an orderly
4 transition, the Director shall establish interim target goals
5 for purposes of this section for each of the 2 calendar
6 years following the date of enactment of this section.

7 “(d) MONITORING AND ENFORCEMENT OF GOALS.—
8 The requirements of section 1336 of the Federal Housing
9 Enterprises Safety and Soundness Act of 1992, shall
10 apply to this section, in the same manner and to the same
11 extent as that section applies to the Federal housing enter-
12 prises.

13 “(e) ANNUAL REPORT.—The Director shall annually
14 report to Congress on the performance of the Banks in
15 meeting the goals established under this section.”.

16 **SEC. 206. COMMUNITY DEVELOPMENT FINANCIAL INSTITU-**
17 **TIONS.**

18 Section 4(a)(1) of the Federal Home Loan Bank Act
19 (12 U.S.C. 1424(a)(1)) is amended—

20 (1) by inserting after “savings bank,” the fol-
21 lowing: “community development financial institu-
22 tion,”; and

23 (2) in subparagraph (B), by inserting after
24 “United States,” the following: “or, in the case of a
25 community development financial institution, is cer-

1 tified as a community development financial institu-
2 tion under the Community Development Banking
3 and Financial Institutions Act of 1994.”.

4 **SEC. 207. SHARING OF INFORMATION AMONG FEDERAL**
5 **HOME LOAN BANKS.**

6 The Federal Home Loan Bank Act is amended by
7 inserting after section 20 (12 U.S.C. 1440) the following
8 new section:

9 **“SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL**
10 **HOME LOAN BANKS.**

11 “(a) INFORMATION ON FINANCIAL CONDITION.—In
12 order to enable each Federal Home Loan Bank to evaluate
13 the financial condition of one or more of the other Federal
14 Home Loan Banks individually and the Federal Home
15 Loan Bank System (including any risks associated with
16 the issuance or repayment of consolidated Federal Home
17 Loan Bank bonds and debentures or other borrowings and
18 the joint and several liabilities of the Banks incurred due
19 to such borrowings), as well as to comply with any of its
20 obligations under the Securities Exchange Act of 1934 (15
21 U.S.C. 78a et seq.), the Director shall make available to
22 the Banks such reports, records, or other information as
23 may be available, relating to the condition of any Federal
24 Home Loan Bank.

25 “(b) SHARING OF INFORMATION.—

1 “(1) IN GENERAL.—The Director shall promul-
2 gate regulations to facilitate the sharing of informa-
3 tion made available under subsection (a) directly
4 among the Federal Home Loan Banks.

5 “(2) LIMITATION.—Notwithstanding paragraph
6 (1), a Federal Home Loan Bank responding to a re-
7 quest from another Bank or from the Director for
8 information pursuant to this section may request
9 that the Director determine that such information is
10 proprietary and that the public interest requires that
11 such information not be shared.

12 “(c) LIMITATION.—Nothing in this section shall af-
13 fect the obligations of any Federal Home Loan Bank
14 under the Securities Exchange Act of 1934 (15 U.S.C.
15 78a et seq.) or the regulations issued by the Securities
16 and Exchange Commission thereunder.”.

17 **SEC. 208. EXCLUSION FROM CERTAIN REQUIREMENTS.**

18 (a) IN GENERAL.—The Federal Home Loan Banks
19 shall be exempt from compliance with—

20 (1) sections 13(e), 14(a), and 14(c) of the Se-
21 curities Exchange Act of 1934, and related Commis-
22 sion regulations;

23 (2) section 15 of the Securities Exchange Act
24 of 1934, and related Commission regulations, with

1 respect to transactions in the capital stock of a Fed-
2 eral Home Loan Bank;

3 (3) section 17A of the Securities Exchange Act
4 of 1934, and related Commission regulations, with
5 respect to the transfer of the securities of a Federal
6 Home Loan Bank; and

7 (4) the Trust Indenture Act of 1939.

8 (b) MEMBER EXEMPTION.—The members of the
9 Federal Home Loan Bank System shall be exempt from
10 compliance with sections 13(d), 13(f), 13(g), 14(d), and
11 16 of the Securities Exchange Act of 1934, and related
12 Commission regulations, with respect to ownership of or
13 transactions in the capital stock of the Federal Home
14 Loan Banks by such members.

15 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

16 (1) CAPITAL STOCK.—The capital stock issued
17 by each of the Federal Home Loan Banks under
18 section 6 of the Federal Home Loan Bank Act are—

19 (A) exempted securities, within the mean-
20 ing of section 3(a)(2) of the Securities Act of
21 1933; and

22 (B) exempted securities, within the mean-
23 ing of section 3(a)(12)(A) of the Securities Ex-
24 change Act of 1934, except to the extent pro-
25 vided in section 38 of that Act.

1 (2) OTHER OBLIGATIONS.—The debentures,
2 bonds, and other obligations issued under section 11
3 of the Federal Home Loan Bank Act (12 U.S.C.
4 1431) are—

5 (A) exempted securities, within the mean-
6 ing of section 3(a)(2) of the Securities Act of
7 1933;

8 (B) government securities, within the
9 meaning of section 3(a)(42) of the Securities
10 Exchange Act of 1934; and

11 (C) government securities, within the
12 meaning of section 2(a)(16) of the Investment
13 Company Act of 1940.

14 (3) BROKERS AND DEALERS.—A person (other
15 than a Federal Home Loan Bank effecting trans-
16 actions for members of the Federal Home Loan
17 Bank System) that effects transactions in the capital
18 stock or other obligations of a Federal Home Loan
19 Bank, for the account of others or for that person's
20 own account, as applicable, is a broker or dealer, as
21 those terms are defined in paragraphs (4) and (5),
22 respectively, of section 3(a) of the Securities Ex-
23 change Act of 1934, but is excluded from the defini-
24 tion of—

1 (A) the term “government securities
2 broker” under section 3(a)(43) of the Securities
3 Exchange Act of 1934; and

4 (B) the term “government securities deal-
5 er” under section 3(a)(44) of the Securities Ex-
6 change Act of 1934.

7 (d) EXEMPTION FROM REPORTING REQUIRE-
8 MENTS.—The Federal Home Loan Banks shall be exempt
9 from periodic reporting requirements under the securities
10 laws pertaining to the disclosure of—

11 (1) related party transactions that occur in the
12 ordinary course of the business of the Banks with
13 members; and

14 (2) the unregistered sales of equity securities.

15 (e) TENDER OFFERS.—Commission rules relating to
16 tender offers shall not apply in connection with trans-
17 actions in the capital stock of the Federal Home Loan
18 Banks.

19 (f) REGULATIONS.—

20 (1) IN GENERAL.—The Commission shall pro-
21 mulgate such rules and regulations as may be nec-
22 essary or appropriate in the public interest or in fur-
23 therance of this section and the exemptions provided
24 in this section.

1 (2) CONSIDERATIONS.—In issuing regulations
2 under this section, the Commission shall consider
3 the distinctive characteristics of the Federal Home
4 Loan Banks when evaluating—

5 (A) the accounting treatment with respect
6 to the payment to the Resolution Funding Cor-
7 poration;

8 (B) the role of the combined financial
9 statements of the Federal Home Loan Banks;

10 (C) the accounting classification of redeem-
11 able capital stock; and

12 (D) the accounting treatment related to
13 the joint and several nature of the obligations
14 of the Banks.

15 (g) DEFINITIONS.—As used in this section—

16 (1) the terms “Bank”, “Federal Home Loan
17 Bank”, “member”, and “Federal Home Loan Bank
18 System” have the same meanings as in section 2 of
19 the Federal Home Loan Bank Act (12 U.S.C.
20 1422);

21 (2) the term “Commission” means the Securi-
22 ties and Exchange Commission; and

23 (3) the term “securities laws” has the same
24 meaning as in section 3(a)(47) of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78c(a)(47)).

1 **SEC. 209. VOLUNTARY MERGERS.**

2 Section 26 of the Federal Home Loan Bank Act (12
3 U.S.C. 1446) is amended—

4 (1) by striking “Whenever” and inserting “(a)
5 IN GENERAL.—Whenever”; and

6 (2) by adding at the end the following:

7 “(b) VOLUNTARY MERGERS AUTHORIZED.—

8 “(1) IN GENERAL.—Any Federal Home Loan
9 Bank may, with the approval of the Director and of
10 the boards of directors of the Banks involved, merge
11 with another Bank.

12 “(2) REGULATIONS REQUIRED.—The Director
13 shall promulgate regulations establishing the condi-
14 tions and procedures for the consideration and ap-
15 proval of any voluntary merger described in para-
16 graph (1), including the procedures for Bank mem-
17 ber approval.”.

18 **SEC. 210. AUTHORITY TO REDUCE DISTRICTS.**

19 Section 3 of the Federal Home Loan Bank Act (12
20 U.S.C. 1423) is amended—

21 (1) by striking “As soon” and inserting “(a) IN
22 GENERAL.—As soon”; and

23 (2) by adding at the end the following:

24 “(b) AUTHORITY TO REDUCE DISTRICTS.—Notwith-
25 standing subsection (a), the number of districts may be
26 reduced to a number less than 8—

1 “(1) pursuant to a voluntary merger between
2 Banks, as approved pursuant to section 26(b); or

3 “(2) pursuant to a decision by the Director to
4 liquidate a Bank pursuant to section 1367 of the
5 Federal Housing Enterprises Financial Safety and
6 Soundness Act of 1992.”.

7 **SEC. 211. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

8 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)
9 of section 2 of the Federal Home Loan Bank Act (12
10 U.S.C. 1422(10)), as so redesignated by section 201(3)
11 of this Act, is amended by striking “\$500,000,000” each
12 place such term appears and inserting “\$1,000,000,000”.

13 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
14 MENT ACTIVITIES.—Section 10(a) of the Federal Home
15 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

16 (1) in paragraph (2)(B)—

17 (A) by striking “and”; and

18 (B) by inserting “, and community devel-
19 opment activities” before the period at the end;

20 (2) in paragraph (3)(E), by inserting “or com-
21 munity development activities” after “agriculture,”;
22 and

23 (3) in paragraph (6)—

24 (A) by striking “and”; and

1 (B) by inserting “, and ‘community devel-
2 opment activities’ ” before “shall”.

3 **SEC. 212. PUBLIC USE DATA BASE; REPORTS TO CONGRESS.**

4 Section 10 of the Federal Home Loan Bank Act (12
5 U.S.C. 1430) is amended—

6 (1) in subsection (j)(12)—

7 (A) by striking subparagraph (C) and in-
8 serting the following:

9 “(C) REPORTS.—The Director shall annu-
10 ally report to the Committee on Banking, Hous-
11 ing, and Urban Affairs of the Senate and the
12 Committee on Financial Services of the House
13 of Representatives on the collateral pledged to
14 the Banks, including an analysis of collateral by
15 type and by Bank district.”; and

16 (B) by adding at the end the following:

17 “(D) SUBMISSION TO CONGRESS.—The Di-
18 rector shall submit the reports under subpara-
19 graphs (A) and (C) to the Committee on Bank-
20 ing, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the
22 House of Representatives, not later than 180
23 days after the date of enactment of the Federal
24 Housing Finance Regulatory Reform Act of
25 2008.”; and

1 (2) by adding at the end the following:

2 “(k) PUBLIC USE DATABASE.—

3 “(1) DATA.—Each Federal Home Loan Bank
4 shall provide to the Director, in a form determined
5 by the Director, census tract level data relating to
6 mortgages purchased, if any, including—

7 “(A) data consistent with that reported
8 under section 1323 of the Federal Housing En-
9 terprises Financial Safety and Soundness Act
10 of 1992;

11 “(B) data elements required to be reported
12 under the Home Mortgage Disclosure Act of
13 1975; and

14 “(C) any other data elements that the Di-
15 rector considers appropriate.

16 “(2) PUBLIC USE DATABASE.—

17 “(A) IN GENERAL.—The Director shall
18 make available to the public, in a form that is
19 useful to the public (including forms accessible
20 electronically), and to the extent practicable,
21 the data provided to the Director under para-
22 graph (1).

23 “(B) PROPRIETARY INFORMATION.—Not
24 withstanding subparagraph (A), the Director
25 may not provide public access to, or disclose to

1 the public, any information required to be sub-
 2 mitted under this subsection that the Director
 3 determines is proprietary or that would provide
 4 personally identifiable information and that is
 5 not otherwise publicly accessible through other
 6 forms, unless the Director determines that it is
 7 in the public interest to provide such informa-
 8 tion.”.

9 **SEC. 213. SEMIANNUAL REPORTS.**

10 Section 21B of the Federal Home Loan Bank Act
 11 is amended in subsection (f)(2)(C), by adding at the end
 12 the following:

13 “(v) SEMIANNUAL REPORTS.—The
 14 Director shall report semiannually to the
 15 Committee on Banking, Housing, and
 16 Urban Affairs of the Senate and the Com-
 17 mittee on Financial Services of the House
 18 of Representatives on the projected date
 19 for the completion of contributions re-
 20 quired by this section.”.

21 **SEC. 214. LIQUIDATION OR REORGANIZATION OF A FED-**
 22 **ERAL HOME LOAN BANK.**

23 Section 26 of the Federal Home Loan Bank Act (12
 24 U.S.C. 1446) is amended by adding at the end the fol-
 25 lowing: “At least 30 days prior to liquidating or reorga-

1 nizing any Bank under this section, the Director shall no-
2 tify the Bank of its determination and the facts and cir-
3 cumstances upon which such determination is based. The
4 Bank may contest that determination in a hearing before
5 the Director, in which all issues shall be determined on
6 the record pursuant to section 554 of title 5, United
7 States Code.”.

8 **SEC. 215. STUDY AND REPORT TO CONGRESS ON**
9 **SECURITIZATION OF ACQUIRED MEMBER AS-**
10 **SETS.**

11 (a) STUDY.—The Director shall conduct a study on
12 securitization of home mortgage loans purchased or to be
13 purchased from member financial institutions under the
14 Acquired Member Assets programs. In conducting the
15 study, the Director shall establish a process for the formal
16 submission of comments.

17 (b) ELEMENTS.—The study shall encompass—

18 (1) the benefits and risks associated with
19 securitization of Acquired Member Assets;

20 (2) the potential impact of securitization upon
21 liquidity in the mortgage and broader credit mar-
22 kets;

23 (3) the ability of the Federal Home Loan Bank
24 or Banks in question to manage the risks associated
25 with such a program;

1 (4) the impact of such a program on the exist-
2 ing activities of the Banks, including their mortgage
3 portfolios and advances; and

4 (5) the joint and several liability of the Banks
5 and the cooperative structure of the Federal Home
6 Loan Bank System.

7 (c) CONSULTATIONS.—In conducting the study under
8 this section, the Director shall consult with the Federal
9 Home Loan Banks, the Banks’ fiscal agent, representa-
10 tives of the mortgage lending industry, practitioners in the
11 structured finance field, and other experts as needed.

12 (d) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Director shall submit a re-
14 port to Congress on the results of the study conducted
15 under subsection (a), including policy recommendations
16 based on the analysis of the Director of the feasibility of
17 mortgage-backed securities issuance by a Federal Home
18 Loan Bank or Banks and the risks and benefits associated
19 with such program or programs.

20 (e) DEFINITIONS.—As used in this section, the terms
21 “member”, “Bank”, and “Federal Home Loan Bank”
22 have the same meanings as in section 2 of the Federal
23 Home Loan Bank Act (12 U.S.C. 1422).

1 **SEC. 216. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—

3 Section 1113(o) of the Right to Financial Privacy Act of
4 1978 (12 U.S.C. 3413(o)) is amended—

5 (1) by striking “Federal Housing Finance
6 Board” and inserting “Federal Housing Finance
7 Agency”; and

8 (2) by striking “Federal Housing Finance
9 Board’s” and inserting “Federal Housing Finance
10 Agency’s”.

11 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
12 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of
13 the Riegle Community Development and Regulatory Im-
14 provement Act of 1994 (12 U.S.C. 4716(e)) is amended
15 by striking “Federal Housing Finance Board” and insert-
16 ing “Federal Housing Finance Agency”.

17 (c) TITLE 18, UNITED STATES CODE.—Title 18,
18 United States Code, is amended by striking “Federal
19 Housing Finance Board” each place such term appears
20 in each of sections 212, 657, 1006, and 1014, and insert-
21 ing “Federal Housing Finance Agency”.

22 (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the
23 Multifamily Assisted Housing Reform and Affordability
24 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
25 ing “Federal Housing Finance Board” and inserting
26 “Federal Housing Finance Agency”.

1 (e) TITLE 44, UNITED STATES CODE.—Section
2 3502(5) of title 44, United States Code, is amended by
3 striking “Federal Housing Finance Board” and inserting
4 “Federal Housing Finance Agency”.

5 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
6 1004(d)(2)(D)(iii) of the Launching Our Communities’
7 Access to Local Television Act of 2000 (47 U.S.C.
8 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
9 eral Housing Enterprise Oversight, the Federal Housing
10 Finance Board” and inserting “Federal Housing Finance
11 Agency”.

12 (g) FIRREA.—Section 1216 of the Financial Institu-
13 tions Reform, Recovery, and Enhancement Act of 1989
14 (12 U.S.C. 1833e) is amended—

15 (1) in subsection (a), by striking paragraph (3)
16 and inserting the following:

17 “(3) the Federal Housing Finance Agency;”;

18 (2) in subsection (b), by striking “Federal Na-
19 tional Mortgage Association” and inserting “Federal
20 Home Loan Banks, the Federal National Mortgage
21 Association,”; and

22 (3) in subsection (c), by striking “Finance
23 Board” and inserting “Finance Agency”.

1 **SEC. 217. STUDY ON FEDERAL HOME LOAN BANK AD-**
2 **VANCES.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this Act, the Director shall conduct
5 a study and submit a report to the Committee on Banking,
6 Housing, and Urban Affairs of the Senate and the Com-
7 mittee on Financial Services of the House or Representa-
8 tives on the extent to which loans and securities used as
9 collateral to support Federal Home Loan Bank advances
10 are consistent with the interagency guidance on nontradi-
11 tional mortgage products.

12 (b) REQUIRED CONTENT.—The study required under
13 subsection (a) shall—

14 (1) consider and recommend any additional reg-
15 ulations, guidance, advisory bulletins, or other ad-
16 ministrative actions necessary to ensure that the
17 Federal Home Loan Banks are not supporting loans
18 with predatory characteristics; and

19 (2) include an opportunity for the public to
20 comment on any recommendations made under para-
21 graph (1).

22 **SEC. 218. FEDERAL HOME LOAN BANK REFINANCING AU-**
23 **THORITY FOR CERTAIN RESIDENTIAL MORT-**
24 **GAGE LOANS.**

25 Section 10(j)(2) of the Federal Home Loan Bank Act
26 (12 U.S.C. 1430(j)(2)) is amended—

1 (1) in subparagraph (A), by striking “or” at
2 the end;

3 (2) in subparagraph (B), by striking the period
4 at the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(C) during the 2-year period beginning on
7 the date of enactment of this subparagraph, re-
8 finance loans that are secured by a first mort-
9 gage on a primary residence of any family hav-
10 ing an income at or below 80 percent of the me-
11 dian income for the area.”.

12 **TITLE III—TRANSFER OF FUNC-**
13 **TIONS, PERSONNEL, AND**
14 **PROPERTY OF OFHEO AND**
15 **THE FEDERAL HOUSING FI-**
16 **NANCE BOARD**

17 **Subtitle A—OFHEO**

18 **SEC. 301. ABOLISHMENT OF OFHEO.**

19 (a) IN GENERAL.—Effective at the end of the 1-year
20 period beginning on the date of enactment of this Act, the
21 Office of Federal Housing Enterprise Oversight of the De-
22 partment of Housing and Urban Development and the po-
23 sitions of the Director and Deputy Director of such Office
24 are abolished.

1 (b) DISPOSITION OF AFFAIRS.—During the 1-year
2 period beginning on the date of enactment of this Act, the
3 Director of the Office of Federal Housing Enterprise
4 Oversight, solely for the purpose of winding up the affairs
5 of the Office of Federal Housing Enterprise Oversight—

6 (1) shall manage the employees of such Office
7 and provide for the payment of the compensation
8 and benefits of any such employee which accrue be-
9 fore the effective date of the transfer of such em-
10 ployee under section 303; and

11 (2) may take any other action necessary for the
12 purpose of winding up the affairs of the Office.

13 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—
14 The amendments made by title I and the abolishment of
15 the Office of Federal Housing Enterprise Oversight under
16 subsection (a) of this section may not be construed to af-
17 fect the status of any employee of such Office as an em-
18 ployee of an agency of the United States for purposes of
19 any other provision of law before the effective date of the
20 transfer of any such employee under section 303.

21 (d) USE OF PROPERTY AND SERVICES.—

22 (1) PROPERTY.—The Director may use the
23 property of the Office of Federal Housing Enter-
24 prise Oversight to perform functions which have
25 been transferred to the Director for such time as is

1 reasonable to facilitate the orderly transfer of func-
2 tions transferred under any other provision of this
3 Act or any amendment made by this Act to any
4 other provision of law.

5 (2) AGENCY SERVICES.—Any agency, depart-
6 ment, or other instrumentality of the United States,
7 and any successor to any such agency, department,
8 or instrumentality, which was providing supporting
9 services to the Office of Federal Housing Enterprise
10 Oversight before the expiration of the period under
11 subsection (a) in connection with functions that are
12 transferred to the Director shall—

13 (A) continue to provide such services, on a
14 reimbursable basis, until the transfer of such
15 functions is complete; and

16 (B) consult with any such agency to co-
17 ordinate and facilitate a prompt and reasonable
18 transition.

19 (e) CONTINUATION OF SERVICES.—The Director may
20 use the services of employees and other personnel of the
21 Office of Federal Housing Enterprise Oversight, on a re-
22 imburseable basis, to perform functions which have been
23 transferred to the Director for such time as is reasonable
24 to facilitate the orderly transfer of functions pursuant to

1 any other provision of this Act or any amendment made
2 by this Act to any other provision of law.

3 (f) SAVINGS PROVISIONS.—

4 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
5 TIONS NOT AFFECTED.—Subsection (a) shall not af-
6 fect the validity of any right, duty, or obligation of
7 the United States, the Director of the Office of Fed-
8 eral Housing Enterprise Oversight, or any other per-
9 son, which—

10 (A) arises under—

11 (i) the Federal Housing Enterprises
12 Financial Safety and Soundness Act of
13 1992;

14 (ii) the Federal National Mortgage
15 Association Charter Act;

16 (iii) the Federal Home Loan Mort-
17 gage Corporation Act; or

18 (iv) any other provision of law appli-
19 cable with respect to such Office; and

20 (B) existed on the day before the date of
21 abolishment under subsection (a).

22 (2) CONTINUATION OF SUITS.—No action or
23 other proceeding commenced by or against the Di-
24 rector of the Office of Federal Housing Enterprise
25 Oversight in connection with functions that are

1 transferred to the Director of the Federal Housing
2 Finance Agency shall abate by reason of the enact-
3 ment of this Act, except that the Director of the
4 Federal Housing Finance Agency shall be sub-
5 stituted for the Director of the Office of Federal
6 Housing Enterprise Oversight as a party to any
7 such action or proceeding.

8 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
9 **ACTIONS.**

10 (a) IN GENERAL.—All regulations, orders, and deter-
11 minations described in subsection (b) shall remain in ef-
12 fect according to the terms of such regulations, orders,
13 and determinations, and shall be enforceable by or against
14 the Director or the Secretary of Housing and Urban De-
15 velopment, as the case may be, until modified, terminated,
16 set aside, or superseded in accordance with applicable law
17 by the Director or the Secretary, as the case may be, any
18 court of competent jurisdiction, or operation of law.

19 (b) APPLICABILITY.—A regulation, order, or deter-
20 mination is described in this subsection if it—

21 (1) was issued, made, prescribed, or allowed to
22 become effective by—

23 (A) the Office of Federal Housing Enter-
24 prise Oversight;

1 (B) the Secretary of Housing and Urban
 2 Development, and relates to the authority of
 3 the Secretary under—

4 (i) the Federal Housing Enterprises
 5 Financial Safety and Soundness Act of
 6 1992;

7 (ii) the Federal National Mortgage
 8 Association Charter Act, with respect to
 9 the Federal National Mortgage Associa-
 10 tion; or

11 (iii) the Federal Home Loan Mort-
 12 gage Corporation Act, with respect to the
 13 Federal Home Loan Mortgage Corpora-
 14 tion; or

15 (C) a court of competent jurisdiction, and
 16 relates to functions transferred by this Act; and

17 (2) is in effect on the effective date of the abol-
 18 ishment under section 301(a).

19 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
 20 **OFHEO.**

21 (a) TRANSFER.—Each employee of the Office of Fed-
 22 eral Housing Enterprise Oversight shall be transferred to
 23 the Agency for employment, not later than the effective
 24 date of the abolishment under section 301(a), and such

1 transfer shall be deemed a transfer of function for pur-
2 poses of section 3503 of title 5, United States Code.

3 (b) GUARANTEED POSITIONS.—

4 (1) IN GENERAL.—Each employee transferred
5 under subsection (a) shall be guaranteed a position
6 with the same status, tenure, grade, and pay as that
7 held on the day immediately preceding the transfer.

8 (2) NO INVOLUNTARY SEPARATION OR REDUC-
9 TION.—An employee transferred under subsection
10 (a) holding a permanent position on the day imme-
11 diately preceding the transfer may not be involun-
12 tarily separated or reduced in grade or compensation
13 during the 12-month period beginning on the date of
14 transfer, except for cause, or, in the case of a tem-
15 porary employee, separated in accordance with the
16 terms of the appointment of the employee.

17 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
18 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

19 (1) IN GENERAL.—In the case of an employee
20 occupying a position in the excepted service or the
21 Senior Executive Service, any appointment authority
22 established under law or by regulations of the Office
23 of Personnel Management for filling such position
24 shall be transferred, subject to paragraph (2).

1 (2) DECLINE OF TRANSFER.—The Director
2 may decline a transfer of authority under paragraph
3 (1) to the extent that such authority relates to—

4 (A) a position excepted from the competi-
5 tive service because of its confidential, policy-
6 making, policy-determining, or policy-advocating
7 character; or

8 (B) a noncareer position in the Senior Ex-
9 ecutive Service (within the meaning of section
10 3132(a)(7) of title 5, United States Code).

11 (d) REORGANIZATION.—If the Director determines,
12 after the end of the 1-year period beginning on the effec-
13 tive date of the abolishment under section 301(a), that
14 a reorganization of the combined workforce is required,
15 that reorganization shall be deemed a major reorganiza-
16 tion for purposes of affording affected employee retire-
17 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
18 5, United States Code.

19 (e) EMPLOYEE BENEFIT PROGRAMS.—

20 (1) IN GENERAL.—Any employee of the Office
21 of Federal Housing Enterprise Oversight accepting
22 employment with the Agency as a result of a trans-
23 fer under subsection (a) may retain, for 12 months
24 after the date on which such transfer occurs, mem-
25 bership in any employee benefit program of the

1 Agency or the Office of Federal Housing Enterprise
2 Oversight of the Department of Housing and Urban
3 Development, as applicable, including insurance, to
4 which such employee belongs on the date of the abol-
5 ishment under section 301(a), if—

6 (A) the employee does not elect to give up
7 the benefit or membership in the program; and

8 (B) the benefit or program is continued by
9 the Director of the Federal Housing Finance
10 Agency.

11 (2) COST DIFFERENTIAL.—

12 (A) IN GENERAL.—The difference in the
13 costs between the benefits which would have
14 been provided by the Office of Federal Housing
15 Enterprise Oversight and those provided by this
16 section shall be paid by the Director.

17 (B) HEALTH INSURANCE.—If any em-
18 ployee elects to give up membership in a health
19 insurance program or the health insurance pro-
20 gram is not continued by the Director, the em-
21 ployee shall be permitted to select an alternate
22 Federal health insurance program not later
23 than 30 days after the date of such election or
24 notice, without regard to any other regularly
25 scheduled open season.

1 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

2 Upon the effective date of its abolishment under sec-
3 tion 301(a), all property of the Office of Federal Housing
4 Enterprise Oversight shall transfer to the Agency.

5 **Subtitle B—Federal Housing**
6 **Finance Board**

7 **SEC. 311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
8 **NANCE BOARD.**

9 (a) IN GENERAL.—Effective at the end of the 1-year
10 period beginning on the date of enactment of this Act, the
11 Federal Housing Finance Board (in this subtitle referred
12 to as the “Board”) is abolished.

13 (b) DISPOSITION OF AFFAIRS.—During the 1-year
14 period beginning on the date of enactment of this Act, the
15 Board, solely for the purpose of winding up the affairs
16 of the Board—

17 (1) shall manage the employees of the Board
18 and provide for the payment of the compensation
19 and benefits of any such employee which accrue be-
20 fore the effective date of the transfer of such em-
21 ployee under section 313; and

22 (2) may take any other action necessary for the
23 purpose of winding up the affairs of the Board.

24 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—
25 The amendments made by titles I and II and the abolish-
26 ment of the Board under subsection (a) may not be con-

1 strued to affect the status of any employee of the Board
2 as an employee of an agency of the United States for pur-
3 poses of any other provision of law before the effective
4 date of the transfer of any such employee under section
5 313.

6 (d) USE OF PROPERTY AND SERVICES.—

7 (1) PROPERTY.—The Director may use the
8 property of the Board to perform functions which
9 have been transferred to the Director, for such time
10 as is reasonable to facilitate the orderly transfer of
11 functions transferred under any other provision of
12 this Act or any amendment made by this Act to any
13 other provision of law.

14 (2) AGENCY SERVICES.—Any agency, depart-
15 ment, or other instrumentality of the United States,
16 and any successor to any such agency, department,
17 or instrumentality, which was providing supporting
18 services to the Board before the expiration of the 1-
19 year period under subsection (a) in connection with
20 functions that are transferred to the Director
21 shall—

22 (A) continue to provide such services, on a
23 reimbursable basis, until the transfer of such
24 functions is complete; and

1 (B) consult with any such agency to co-
2 ordinate and facilitate a prompt and reasonable
3 transition.

4 (e) CONTINUATION OF SERVICES.—The Director may
5 use the services of employees and other personnel of the
6 Board, on a reimbursable basis, to perform functions
7 which have been transferred to the Director for such time
8 as is reasonable to facilitate the orderly transfer of func-
9 tions pursuant to any other provision of this Act or any
10 amendment made by this Act to any other provision of
11 law.

12 (f) SAVINGS PROVISIONS.—

13 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
14 TIONS NOT AFFECTED.—Subsection (a) shall not af-
15 fect the validity of any right, duty, or obligation of
16 the United States, a member of the Board, or any
17 other person, which—

18 (A) arises under the Federal Home Loan
19 Bank Act, or any other provision of law applica-
20 ble with respect to the Board; and

21 (B) existed on the day before the effective
22 date of the abolishment under subsection (a).

23 (2) CONTINUATION OF SUITS.—No action or
24 other proceeding commenced by or against the
25 Board in connection with functions that are trans-

1 ferred under this Act to the Director shall abate by
2 reason of the enactment of this Act, except that the
3 Director shall be substituted for the Board or any
4 member thereof as a party to any such action or
5 proceeding.

6 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**
7 **ACTIONS.**

8 (a) IN GENERAL.—All regulations, orders, deter-
9 minations, and resolutions described under subsection (b)
10 shall remain in effect according to the terms of such regu-
11 lations, orders, determinations, and resolutions, and shall
12 be enforceable by or against the Director until modified,
13 terminated, set aside, or superseded in accordance with
14 applicable law by the Director, any court of competent ju-
15 risdiction, or operation of law.

16 (b) APPLICABILITY.—A regulation, order, determina-
17 tion, or resolution is described under this subsection if it—

18 (1) was issued, made, prescribed, or allowed to
19 become effective by—

20 (A) the Board; or

21 (B) a court of competent jurisdiction, and
22 relates to functions transferred by this Act; and

23 (2) is in effect on the effective date of the abol-
24 ishment under section 311(a).

1 **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
2 **FEDERAL HOUSING FINANCE BOARD.**

3 (a) TRANSFER.—Each employee of the Board shall
4 be transferred to the Agency for employment, not later
5 than the effective date of the abolishment under section
6 311(a), and such transfer shall be deemed a transfer of
7 function for purposes of section 3503 of title 5, United
8 States Code.

9 (b) GUARANTEED POSITIONS.—

10 (1) IN GENERAL.—Each employee transferred
11 under subsection (a) shall be guaranteed a position
12 with the same status, tenure, grade, and pay as that
13 held on the day immediately preceding the transfer.

14 (2) NO INVOLUNTARY SEPARATION OR REDUC-
15 TION.—An employee holding a permanent position
16 on the day immediately preceding the transfer may
17 not be involuntarily separated or reduced in grade or
18 compensation during the 12-month period beginning
19 on the date of transfer, except for cause, or, if the
20 employee is a temporary employee, separated in ac-
21 cordance with the terms of the appointment of the
22 employee.

23 (c) APPOINTMENT AUTHORITY FOR EXCEPTED EM-
24 PLOYEES.—

25 (1) IN GENERAL.—In the case of an employee
26 occupying a position in the excepted service, any ap-

1 pointment authority established under law or by reg-
2 ulations of the Office of Personnel Management for
3 filling such position shall be transferred, subject to
4 paragraph (2).

5 (2) DECLINE OF TRANSFER.—The Director
6 may decline a transfer of authority under paragraph
7 (1), to the extent that such authority relates to a po-
8 sition excepted from the competitive service because
9 of its confidential, policymaking, policy-determining,
10 or policy-advocating character.

11 (d) REORGANIZATION.—If the Director determines,
12 after the end of the 1-year period beginning on the effec-
13 tive date of the abolishment under section 311(a), that
14 a reorganization of the combined workforce is required,
15 that reorganization shall be deemed a major reorganiza-
16 tion for purposes of affording affected employee retire-
17 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
18 5, United States Code.

19 (e) EMPLOYEE BENEFIT PROGRAMS.—

20 (1) IN GENERAL.—Any employee of the Board
21 accepting employment with the Agency as a result of
22 a transfer under subsection (a) may retain, for 12
23 months after the date on which such transfer occurs,
24 membership in any employee benefit program of the
25 Agency or the Board, as applicable, including insur-

1 ance, to which such employee belongs on the effec-
2 tive date of the abolishment under section 311(a)
3 if—

4 (A) the employee does not elect to give up
5 the benefit or membership in the program; and

6 (B) the benefit or program is continued by
7 the Director.

8 (2) COST DIFFERENTIAL.—

9 (A) IN GENERAL.—The difference in the
10 costs between the benefits which would have
11 been provided by the Board and those provided
12 by this section shall be paid by the Director.

13 (B) HEALTH INSURANCE.—If any em-
14 ployee elects to give up membership in a health
15 insurance program or the health insurance pro-
16 gram is not continued by the Director, the em-
17 ployee shall be permitted to select an alternate
18 Federal health insurance program not later
19 than 30 days after the date of such election or
20 notice, without regard to any other regularly
21 scheduled open season.

1 **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

2 Upon the effective date of the abolishment under sec-
3 tion 311(a), all property of the Board shall transfer to
4 the Agency.

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